NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service, Inc
Washington, D.C.

S. Hrg. 99-1036

AMENDMENTS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AND THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT AND TO ESTABLISH A MEMORIAL IN THE DISTRICT OF COLUMBIA

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 485

A BILL TO AMEND THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980 TO CLARIFY THE TREATMENT OF SUBMERGED LANDS AND OWNERSHIP BY THE ALASKAN NATIVE CORPORATION

S. 1330

A BILL TO AMEND SECTION 504 OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT TO ALLOW EXPANDED MINERAL EXPLORATION OF THE ADMIRALTY ISLAND NATIONAL MONUMENT IN ALASKA

S. 2065

A BILL TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE ALASKA NATIVES WITH CERTAIN OPTIONS FOR THE CONTINUED OWNERSHIP OF LANDS AND CORPORATE SHARES RECEIVED PURSUANT TO THE ACT AND FOR OTHER PURPOSES

S. 2370

A BILL TO ALLOW THE FRANCIS SCOTT KEY PARK FOUNDATION, INCORPORATED TO ERECT A MEMORIAL IN THE DISTRICT OF COLUMBIA

AUGUST 4, 1986

Printed for the use of the Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
68-069 WASHINGTON : 1987

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S311-24

COMMITTEE ON ENERGY AND NATURAL RESOURCES

JAMES A. McCLURE, Idaho, *Chairman*

MARK O. HATFIELD, Oregon
LOWELL P. WEICKER, Jr., Connecticut
PETE V. DOMENICI, New Mexico
MALCOLM WALLOP, Wyoming
JOHN W. WARNER, Virginia
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
CHIC HECHT, Nevada
DANIEL J. EVANS, Washington

J. BENNETT JOHNSTON, Louisiana
DALE BUMPERS, Arkansas
WENDELL H. FORD, Kentucky
HOWARD M. METZENBAUM, Ohio
JOHN MELCHER, Montana
BILL BRADLEY, New Jersey
JEFF BINGAMAN, New Mexico
JOHN D. ROCKEFELLER IV, West Virginia

Frank M. Cushing, *Staff Director*
Gary G. Ellsworth, *Chief Counsel*
D. Michael Harvey, *Chief Counsel for the Minority*

Subcommittee on Public Lands, Reserved Water and Resource Conservation

MALCOLM WALLOP, Wyoming, *Chairman*

LOWELL P. WEICKER, Jr., Connecticut
CHIC HECHT, Nevada
MARK O. HATFIELD, Oregon
PETE V. DOMENICI, New Mexico
FRANK H. MURKOWSKI, Alaska

DALE BUMPERS, Arkansas
JOHN MELCHER, Montana
BILL BRADLEY, New Jersey
JEFF BINGAMAN, New Mexico

James A. McClure and J. Bennett Johnston are Ex Officio Members of the Subcommittee

Tony Bevinetto, *Professional Staff Member*

CONTENTS

Page

S. 485 6

S. 1330 10

S. 2065 12

S. 2370 48

STATEMENTS

Angapak, Nelson, President, Calista Corp., accompanied by Hon. Lloyd Meeds, attorney, Calista 378

Anderson, Bob, staff attorney, Native American Rights Fund 283

Andrews, Rupert E., Director, Alaska Outdoor Council 216

Borbridge, Theodore, Chairman of the Board, Shee Atika, Inc 467

Dimientieff, Mitch, Vice President, Tanana Chiefs Conference, Chief of the Native Village of Neana, Fairbanks, AK 197

Edenshaw, Alvin, Jr., Vice President, Haida Corp 462

Fish, Manus J., Regional Director, National Capital Region, National Park Service, Department of the Interior 561

Gamble, Ivan P., President, Kootznoowoo, Inc.; accompanied by Sterling Bolima 438

Halle, Kay Murphy, member, Board of Directors, Francis Scott Key Park Foundation 578

Horn, William P., Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior 54

Huhndorf, Roy M., President, Cook Inlet Region, Inc 260

Imse, T. Paul, Secretary and General Counsel, Francis Scott Key Park Foundation 585

Jacobus, Cheri C., on behalf of the National Rifle Association, and other concerned Natives and non-Native Alaskans 307

Johnston, Elizabeth B., Vice President, Bristol Bay Native Corp., accompanied by Steve Silver, Washington Counsel 252

Kasayulie, Willie, Chairman, Alaska Native Coalition 285

Katz, John W., Director, State/Federal Relations and Special Counsel to the Governor of Alaska, accompanied by Martha Fox, Special Assistant Attorney General, Office of the Governor of Alaska 353

Larsen, Norman L., President, Francis Scott Key Park Foundation 568

Leask, Janie, President, Alaska Federation of Natives, accompanied by John Shively, consultant, Alaska Federation of Natives 98, 362

Loescher, Robert W., Senior Vice President, Resource Management, Sealaska Corp 477

Mahoney, Tim, Washington representative, Sierra Club 527

McNeil, Chris E. Jr., Senior Vice President and General Counsel, Sealaska, Corp 289

Meeds, Hon. Lloyd, attorney, Calista Corp 398

Mitchell, Don, attorney, Alaska Federation of Natives 376

Munday, William L., assistant to the Mayor, Angoon, AK 432

Murkowski, Hon, Frank H., a U.S. Senator from the State of Alaska 1

Notti, Emil, Commissioner, Alaska Department of Community and Regional Affairs, accompanied by John Katz, Director, State/Federal Reglations and Special Counsel to the Governor 92

Oakar, Hon. Mary Rose, a U.S. Representative from the State of Ohio 558

Pell, Hon. Claiborne, a U.S. Senator from the State of Rhode Island 564

Penfold, Michael J., State Director, Alaska, Bureau of Land Management, Department of the Interior 341

Peterson, R. Max, Chief, Forest Service, Department of Agriculture 416

Page
Pownall, Thomas G., Chairman, Francis Scott Key Park Foundation 574
Reffalt, William C., Director, National Wildlife Refuge Program, the Wilderness Society 203, 402
Sharpe, Maitland, Conservation Director, Izaak Walton League of America 223
Silver, Steve, Counsel, Greens Creek Mining Co 303, 426
Snodgrass, Randall, Alaska Program Director, the Wilderness Society 539
Stevens, Hon. Ted, a U.S. Senator from the State of Alaska 51
Walleri, Michael J., attorney for Tanana Chiefs 197
Williams, William C., President, Tanana Chiefs Conference, Inc 184
Young, Greg L., on behalf of the Territorial Sportsmen 332

APPENDIX

Additional material submitted for the record 595

AMENDMENTS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AND THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT AND TO ESTABLISH A MEMORIAL IN THE DISTRICT OF COLUMBIA

MONDAY, AUGUST 4, 1986

U.S. SENATE, SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Frank H. Murkowski, presiding.

Present: Senators Murkowski and Stevens.

Also present: Tony Bevinetto, professional staff member and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator MURKOWSKI. Good morning. The Senate Energy and Natural Resources Subcommittee will come to order. This is a special Subcommittee on Public Lands, Reserved Water and Resource Conservation. It gives me a great deal of pleasure to welcome you this morning. It is nice to see so many Alaskans here. You look bright-eyed and obviously you either stayed up all night in the airplane like I do or came a day early. But in any event, I do want to welcome you.

I would advise you during the course of these hearings that the record will remain open for a 2-week period. So if you have any second thoughts or further thoughts, why, please avail yourself of the opportunity.

We are going to begin to take testimony today on three bills that affect Alaska. There is one additional bill on the calendar this morning, as well. We are going to begin with Senate bill 2065, the so-called amendments to the Alaska Native Land Claims Settlement Act.

Next we will hear testimony on S. 485. That is very important to Alaskans. And that is the submerged lands bill.

That will be followed by a hearing on Senate bill 1330, and that, for those of you who are particularly interested, is the Admiralty Island legislation.

And then we will finish up, quite patriotically, with the Francis Scott Key bill, Senate bill 2370. That is not necessarily an Alaskan bill, by any means, but it affects the Department of the Interior and other agencies, and it happens to be my bill, as well. I think it represents the question of diversity of activities here.

Just as they will be considered separately here today, all of these bills will be considered and acted upon separately by the committee. There will be no effort to put the bills in and act on them together.

In January at the request of the Alaska Federation of Natives, the delegation—Senator Stevens on my left, Don Young, and myself—introduced legislation containing amendments to the Alaska Native Claims Settlement Act.

Prior to the introduction of this bill, the House of Representatives held an oversight hearing in Anchorage in 1985. Since the bill's introduction, testimony has been taken in nine communities in Alaska. The House Interior Committee also held a hearing in Washington, DC, at which some of you did testify. More hearings have been held, I have been told, by the Senate on this bill than any Alaskan legislation in recent history.

I personally have heard testimony from over 250 witnesses in Hoonah, Barrow, Kotzebue, Anchorage, Bethel, and Fairbanks, where I was joined by the distinguished chairman of this subcommittee, Senator Wallop and his staff, and the professional staff member on my right, Tony Bevinetto.

Senator Stevens joined me in the hearings in Anchorage and also held workshops in Juneau, Sitka, and Ketchikan. In total, there have been 11 separate congressional forums at which Alaskans could voice their concerns on the 1991 issues. This, I might add, is the 12th such forum.

Throughout the hearing process, we have heard from a wide variety of Alaskans, State and local government officials, oil and mining groups, environmental groups, sportsmen groups, Native organizations, even gubernatorial candidates and other interested Alaskans.

In addition, our offices have received numerous calls and letters from concerned Alaskans on the 1991 issue. The public input we have received thus far has shown that there exists a wide range of opinion on several provisions of the 1991 bill. But the purpose of this hearing, the 12th of the 1991 hearings, is to continue this important information-gathering process as well as to focus in on some changes that testimony shows are necessary.

Last Monday, July 28, the House of Representatives passed the 1991 amendments, H.R. 4162. Some changes were made to the bill as originally introduced. The principal change was a tightening of the tribal government disclaimer language. It is my view and the view of many others that these changes are not enough to ensure passage of the bill. It is my intention that the bill undergo additional changes before it is ready for floor action.

Many of the provisions of the bill provided options to Native corporations for addressing stock ownership and transfer questions, dissenters' rights, continuation of stock restrictions, and issuing stock to Natives born after 1971, and are issues that fall into this category. Some changes will be needed on these provisions, such as the need for a uniform voting standard on all votes authorized by these amendments.

The particular responsibility for the policy decisions on these issues however rests for the most part with the Alaska Native community.

On the other hand, there are certain sections of the bill which have broader impacts, and they affect all Alaskans. Extending unlimited tax exempt status to undeveloped lands and ensuring that the bill does not foster the establishment of sovereignty are two such issues.

The most controversial aspect of this legislation concerns its secondary impacts, how it affects the question of Indian country in Alaska and sovereignty. There are many different opinions on whether Indian country exists in Alaska and to what extent Alaska Natives possess sovereign powers of self-government.

Whatever the 1971 Native Claims Settlement Act allowed or disallowed with respect to these questions will remain unchanged by this bill. Senator Stevens, Congressman Young, and I have consistently stated that the 1991 amendments will not foster sovereignty nor will they detract from any self-government powers which Alaska Natives may now possess under existing law. In short, the bill will not tip the scales on these issues in either direction.

I have stated in my opening remarks in each of the hearings I have held in nine communities in Alaska that I will not support any legislation which leads to the creation of a series of independent sovereign entities in Alaska. One can only imagine the confusion that would exist if the State and Federal Government were required to enter into treaties with various sovereign Indian Nations.

I believe that such a situation is contrary to the best interests of all Alaskans, Native and non-Native alike. From the standpoint of where we go collectively as Alaska citizens, it is our intent to retain the current form of government that we have, and that is the government of the State of Alaska.

It is appropriate now to discuss some of the changes which need to be made to the bill in order to address the concerns raised during the hearings.

On the issue of defining developed and undeveloped lands, we have several alternatives from which to choose. Under current law, Native corporation land is taxable 20 years after conveyance. This bill proposes to extend the immunity from taxation indefinitely as long as the land is not developed so that it generates revenue. This proposal is acceptable provided we can all agree on a definition of "developed."

I have asked the Alaska League of Municipal Governments for their views on how undeveloped and developed lands could be distinguished for tax purposes. I will give serious consideration to incorporating the League's views into the definition of developed lands. It has also been suggested that we merely reference the current State law on this matter, and that is something which will also be examined.

The bill specifically grants Native shareholders the option to transfer their corporate assets to another entity—for example, from a village corporation to a Native corporation. Although this provision is opposed by some, it serves a purpose; however, we will add language to the provision which expressly declares that such a transfer shall not be used to avoid taxation of developed lands, to create or promote Indian country, or to gain management responsibilities for fish and game resources.

Further, the legislative intent language will spell out explicitly that the inclusion of these amendments will not in any way foster the creation of any sovereign status. Simply put, whatever governmental powers that Alaska's Native people had under the Alaska Native Claims Settlement Act will be retained. The corrective changes to be made to the 1991 amendments will hopefully put to rest any threat that those amendments will advance the case of sovereignty.

With respect to sovereignty in Indian country, there has been considerable concern that the current provisions of the bill do not maintain the status quo, whatever that may be, on these issues. To address this situation, I would intend to add additional language to two different sections of the bill.

Section 8 will be amended to provide that nothing in the amendment shall be construed as enlarging, diminishing, or in any way affecting the scope of governmental powers if any of any federally recognized tribe, traditional Native council, or Native council organized pursuant to the Indian Reorganization Act.

Likewise, language will be added to section 7 of the bill which expressly declares that a transfer of corporate assets shall not be used to establish or promote or enhance a claim of governmental authority of the entity receiving those assets.

I think it should also be noted that the Department of the Interior will provide extensive testimony on these amendments today. Much of that testimony is opposed to various provisions of the bill. Although I disagree with some of the provisions of that testimony, the Department's substantial opposition is something that has to be addressed by this committee.

I have stated many times that the language of the bill is not cast in stone. Changes will be made to reflect the consensus of all Alaskans on this issue, so long as those changes conform to the ground rules for this legislation.

Among those ground rules are:

One, the purpose of the bill is not to foster the establishment of sovereignty;

Two, there is to be no tax exemption for developed revenue-producing lands; and

Three, the Federal and State governments will not provide any additional land or money to Native corporations for those born after 1971. This issue will have to be addressed under existing corporate stock dilution formulas.

The changes which we envision making will not slow the process toward the passage of the bill. On the contrary, I believe they will greatly improve the chances of getting a bill passed this year.

Following this hearing, assuming we do have a consensus of Alaskans and the Department of the Interior supporting the changes which are going to be discussed, I would expect that we can move expeditiously toward that goal of moving on the bill.

Again, the hearing record will be open for a period of 2 weeks from today during which time written testimony on any of these measures can be submitted to the subcommittee.

In the interest of time, I am going to ask that the witnesses limit their oral statements, and I am going to limit that to 5 minutes, at which time I will ask you to summarize the balance of your statement.

We have lights up here, and I am told by Tony that the lights are working today. When you see the yellow light come on, you will know that you have approximately 1 minute remaining.

Again, additional written comments may be provided and the entire testimony, oral and written, and will be included as part of the record.

Before I introduce my colleague, I want to advise those Alaskans and others that may care to participate that at 5 o'clock in room 418 of the Russell Senate Office Building we will be hosting, my colleagues and I, the delegation, a reception for the Alaskans that may at that particular time be a little tired and in need of a little recuperation. So that is 418, the Russell Senate Office Building, from approximately 5 until 6 sharp.

I would like to extend a welcome to my colleague and friend, the senior Senator, Senator Stevens.

Senator Stevens.

[The texts of the bills follow:]

II

99TH CONGRESS
1ST SESSION

S. 485

To amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 20 (legislative day, FEBRUARY 18), 1985

Mr. MURKOWSKI (for himself and Mr. STEVENS), introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 901 of the Alaska National Interest Lands Conservation Act (94 Stat. 2430; Public Law 96–487) is amended by striking out subsections (a), (d), (e), (f), and (h).

(b) Subsection (b) of section 901 of such Act is amended by striking out "(b)" and inserting in lieu thereof "(a)".

(c) Subsection (c) of section 901 of such Act is amended by—

(1) striking out "(c)" and inserting in lieu thereof "(b)"; and

(2) striking out "described in subsection (a)".

(d) Subsection (g) of section 901 of such Act is amended by striking out "(g)" and inserting in lieu thereof "(c)".

Sec. 2. Section 901 of the Alaska National Interest Lands Conservation Act is further amended by adding at the end thereof the following new subsections:

"(d)(1)(A) Except as provided in subparagraph (B), whenever the Secretary surveys land selected by an Alaska Native, a Native corporation, or the State pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act, lakes, rivers, and streams shall be meandered in accordance with the principles in the Bureau of Land Management, "Manual of Surveying Instructions" (1973).

"(B) If title to lands beneath navigable waters of a lake less than 50 acres in size or a river or stream less three chains in width did not vest in the State pursuant to the Submerged Lands Act, such lake, river, or stream shall not be meandered.

"(C) The Secretary is not required to determine the navigability of a lake, river, or stream which because of its size or width is required to be meandered or to compute the acreage of the land beneath such lake, river, or stream or to describe such land in any conveyance document.

"(D) Nothing in this subsection shall be construed to require ground survey or monumentation of meander lines.

"(2) Whenever, pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act, the Secretary conveys land to an Alaska Native, a Native Corporation, or the State which abuts or surrounds a lake, river, or stream which is required to be meandered, all right, title, and interest of the United States, if any, in the land under such lake, river, or stream lying between the uplands and the median line or midpoint, as the case may be, shall vest in and shall not be charged against the acreage entitlement of such Native or Native corporation or the State. The right, title, and interest vested in such Native or Native corporation shall be no greater an estate than the estate he or it is conveyed in the land which abuts or surrounds the lake, river, or stream.

"(e) The specific terms, conditions, procedures, convenants, reservations and other restrictions set forth in the document entitled, "Memorandum of Agreement between the United States Department of the Interior and the State of Alaska" dated March 28, 1984, signed by the Secretary and the Governor of Alaska and submitted to the Committee on Interior and Insular Affairs of the House of Representatives, and the Committee on Energy and Natural Resources of the

Senate, are hereby incorporated in this section and are ratified as to the duties and obligations of the United States and the State, as a matter of Federal law.

"(f) Nothing in this section shall be construed to change the provisions of sections 12 (b)(1) and (b)(2) of Public Law 94-204.".

○

99TH CONGRESS
1ST SESSION

S. 1330

To amend section 504 of the Alaska National Interest Lands Conservation Act to allow expanded mineral exploration of the Admiralty Island National Monument in Alaska.

IN THE SENATE OF THE UNITED STATES

JUNE 20 (legislative day, JUNE 3), 1985

Mr. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend section 504 of the Alaska National Interest Lands Conservation Act to allow expanded mineral exploration of the Admiralty Island National Monument in Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section section 504 of the Alaska National Interest Lands Conservation Act (94 Stat. 2403) is amended by adding a new subsection (k) at the end thereof:

"(k)(1) As provided in this subsection, the Secretary of Agriculture shall issue the holder of any properly located, recorded and maintained unperfected claim within the approximately nine thousand eight hundred and ninety acre area of the Admiralty Island National Monument, as generally depicted on a map of the area dated May 15, 1985, at the holder's request, an exploration permit subject to all the conditions of this section except subsections (c)(1), (c)(2), and (d)(3). Such permit shall be for a term of five years, with renewal periods of five years to be granted so long as the applicant submits any plan for exploration required by the Secretary. Such permit shall in all cases terminate no later than midnight, December 31, 2020.

"(2) Before the Secretary issues any permit for a period terminating after December 2, 1985, the holder of a claim or claims shall relinquish to the United States all rights to receive a patent to the fee title in any land upon which a claim or claims are located within the Monument, and evidence of such relinquishment shall be provided to the Secretary.

"(3) For any claims for which patent rights to fee title are relinquished under subsection (2) or for which valid discovery has been made or is made within the meaning of the mining laws of the United States during the term of any exploration permit, the holder of such claims shall be entitled to a patent to the minerals within such claims.".

○

II

99TH CONGRESS
2D SESSION

S. 2065

To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6 (legislative day, JANUARY 27), 1986

Mr. MURKOWSKI (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. Congress finds and declares that—

(a) the Alaska Native Claims Settlement Act, was enacted to achieve a fair and just settlement of all claims by Natives and Native groups based on aboriginal land claims in a manner consistent with the real economic and social needs of Alaska Natives, including maximum participation by Native people in decisions which affect their rights and property;

(b) the corporate model adopted by the Alaska Native Claims Settlement Act is frequently ill-adapted to the reality of life in many Alaskan Native villages and to traditional native cutural values;

(c) although the Congress mandated that the settlement be implemented rapidly and without litigation, the complexity of the land conveyance process and frequent and costly litigation has delayed the implementation of the settlement and significantly diminished its value;

(d) providing Alaska Natives maximum participation in decisions affecting their rights and property necessitates that the Alaska Native Claims Settlement Act be amended to provide the shareholders of each Native Corporation an opportunity to implement the settlement in the manner which they determine is best suited to their particular circumstances and needs, including, but not limited to, an opportunity to decide the manner in which Alaska Natives born after December 18, 1971, should participate in the settlement and whether the business corporation is the most appropriate entity to hold legal title to lands conveyed in partial settlement of aboriginal claims; and

(e) providing Alaska Natives maximum participation in decisions affecting their rights and property further necessitates that the Alaska Native Claims Settlement Act be amended to continue restrictions on the transfer of stock of Native corporations until such time as the shareholders of a corporation may vote to terminate such restrictions.

Sec. 2. Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602) is hereby amended by the addition of the following additional subsections:

"(n) 'Native common stock' means the stock of a Native Corporation issued pursuant to subsections 7(g) (1) and (3) of this Act which carries or initially carried with it the rights and restrictions provided for in section 7(h); and

"(o) 'Descendant of a Native' means a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity.".

Sec. 3. Section 7(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(g)) is hereby amended by (i) numbering the existing subsection paragraph (1) and adding the word "Native" after the words "number of shares of" and before the words "common stock" and adding the words "Native common" after the words "one hundred shares of" and before the word "stock" and (ii) adding the following paragraphs:

"(2)(A) Notwithstanding any other provision of this Act and in addition to any other existing authority, if authorized by amendment to its articles of incorporation after the effective date of this Act, any Regional Corporation may issue such shares of stock divided into such classes and series within classes, with such preferences, limitations, and relative rights, including, without limitation, dividend rights, voting rights, liquidation preferences, and rights to share in distributions made to stockholders under subsections (j) and (m) of this section, as may be provided in its articles of incorporation or an amendment thereto. Notwithstanding any provision of State or other Federal law, such shares may be subject to inalienability restrictions not in excess of the restrictions provided for in paragraph (1) of section 7(h), as provided in the articles of incorporation or an amendment thereto. Notwithstanding any provision of State or other Federal law, issuance of one or more classes of such stock may be restricted to (i) Natives who have reached the age of sixty-five or (ii) any other identifiable group of Natives: *Provided*, That such group is defined in terms of general applicability, and is not in any way defined by reference to a place of residence, family or position as an officer, director, employee of a Native Corporation or shareholder of a Native Corporation other than the issuing Corporation. Any such shares of stock may be issued to holders of Native common stock or others for such consideration as may be permitted by law.

"(B) Any amendment to the articles of incorporation of a Regional Corporation which permits the issuance of classes and series of stock other than Native common stock shall specify the maximum number of shares that may be issued in any such class or series, and the maximum number of votes that may be held by shares of such class or series. During any period in which the restrictions on alienation of Native common stock are in effect no stock may be issued under this section to a group of individuals composed only of employees, officers and/or directors of the Native Corporation. If such amendment permits the issuance of classes or series of stock which, when issued, singly or in combination, may cause the outstanding shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) to represent less than a majority of the voting power of all stock in the Native Corporation, the stockholders of such corporation shall be expressly so advised in the proxy statement or other informational material distributed in advance of their vote upon the amendment. In no event may shares of stock other than Native common stock be issued more than thirteen months after the date of stockholder vote authorizing the issuance of such stock if, upon the issuance of such stock and as a result of such issuance, the outstanding shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) will represent less than a majority of the voting power of all stock in the Regional Corporation: *Provided*, That the restriction set forth in this sentence shall be of no further force or effect if shares of stock have been lawfully issued pursuant to this paragraph which have caused the shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) to represent less than a majority of the voting power of all stock in the Regional Corporation or if the restrictions upon alienation of Native common stock provided for in paragraph (1) of section 7(h) have expired or been terminated by vote of the stockholders.

"(C) Notwithstanding the issuance of additional shares of stock or a new class of stock pursuant to this paragraph, the Regional Corporation shall continue to apply the ratio last computed under subsection (m) before the effective date of this Act for purposes of distributing funds under subsections (j) and (m). If shares of different classes or series have been issued pursuant to this paragraph to the class of stockholders who, prior to the effective date of this Act were the class of stockholders holding nonvillage stock ("nonvillage stockholders"), distributions payable under subsections (j) and (m) shall be made with respect to such classes or series in accordance with the rights, if any, of each class or series to share in such distributions as provided in the articles of incorporation or any amendment thereto and, if so provided in the articles of incorporation or an amendment thereto, the right to share in such distributions may be established as a right or security separate from any other shares issued to such nonvillage stockholders. Common stock issued pursuant to this subsection which carries the same rights and restrictions provided for in section 7(h) or which is issued in substitution for Native common stock shall be deemed to be Native common stock as long as all such rights and reservations are in effect with respect thereto.

"(3) Notwithstanding any provision of Federal or State law to the contrary and in addition to any other existing authority, if authorized by an amendment to the articles of incorporation, a Regional Corporation may issue up to one hundred shares of additional Native common stock to:

"(A) Natives born after December 18, 1971;

"(B) Natives who have attained the age of sixty-five; and

"(C) Natives who were eligible for enrollment pursuant to section 5 but who were not so enrolled.

for no consideration or for such consideration and upon such terms and conditions as may be specified in the amendment to the articles of incorporation or in the resolution or resolutions providing for the issuance of such stock adopted by the board of directors pursuant to authority expressly vested in it by the articles of incorporation: *Provided*, That the issuance of additional shares of Native common stock or other stock pursuant to this subsection shall have no effect on the division and distribution of revenues pursuant to subsection (i) of this section.".

SEC. 4. Section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) is further amended to read as follows:

"(1) Except as otherwise provided in paragraphs (3) and (4) of this subsection, Native common stock of a Regional Corporation issued pursuant to subsections (g) (1) and (3) of this section shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that until the termination of the restrictions by the shareholders under paragraph (2) of this subsection such Native common stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto, may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, treated as an asset in a bankruptcy estate, or otherwise alienated, whether such Native common stock is held by Natives or descendants of Natives or by persons who are neither Natives nor descendants of Natives: *Provided*, That such limitation shall not apply to transfers of Native common stock if and to the extent that any such transfers are made to Natives or to descendants of Natives pursuant to a court decree of separation, divorce or child support or by a stockholder who is a member of a professional organization, association, or board which limits the availability of that stockholder to practice his profession because of holding stock issued under this chapter.

"(2) The restrictions on the alienation of Native common stock described in paragraph (1) shall continue indefinitely until such time as the shareholders of a Regional Corporation vote to terminate such restrictions. Except with respect to Bristol Bay Native Corporation and any Village Corporation in the Bristol Bay region, which may by resolution of its board of directors adopted within one year after the effective date of this Act elect to follow the procedures set forth in section 7b, a vote on the question of whether to terminate restrictions on the alienation of Native common stock, including a vote by any such corporation if it does not solely elect, shall be conducted pursuant to the following procedure:

"(A) On or before December 18, 1991, or at any time thereafter, the shareholders of a Regional Corporation may vote whether to terminate the restrictions on alienation described in paragraph (1). In conducting the vote, the board of directors of the Regional Corporation shall have the option of seeking shareholder approval either of a resolution determining that such restrictions be continued or of a resolution that such restrictions shall be terminated. Continuation of the restrictions on alienation for such period of time as the shareholders may approve is hereby authorized.

"(B) If the shareholders reject a resolution that the restrictions on alienation be continued, such restrictions shall be terminated in the manner described in subparagraph (D). In the event that the shareholders reject a resolution that the restrictions be terminated, such restrictions shall be extended for an indefinite period, subject to the provisions of subparagraph (C).

"(C) A resolution adopted pursuant to this paragraph shall be considered to be an amendment to the articles of incorporation of the Regional Corporation for purposes of paragraph (6) of this subsection. Adoption of a resolution to continue the restrictions on alienation or rejection of a resolution to terminate such restrictions shall not preclude the shareholders of the

Regional Corporation from later approving a resolution to terminate the restrictions.

"(D) A resolution to terminate restrictions on the alienation of Native common stock shall state the date or describe the specific events upon which the restrictions will terminate if the resolution is approved. If a resolution to continue such restrictions is defeated, the shareholders may also adopt a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate. If a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate is not adopted, the restrictions shall terminate one year from the date of the vote disapproving the resolution to continue such restrictions. On the date of termination all Native common stock previously issued shall be deemed canceled, and shares of stock of the appropriate class shall be issued to each stockholder share for share, subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or in agreements between the corporation and individual shareholders.

"(3) Upon the death of any holder of Native common stock, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy: *Provided,* That in the event that stock is transferred to a person not a Native or a descendant of a Native, the Regional Corporation shall have an option to purchase such stock: *Provided further,* That this paragraph shall not restrict the devise or intestate disposition of any shares of Native common stock of a Regional Corporation whose shareholders have amended the articles of incorporation to remove the limitation on alienation of such stock otherwise imposed by paragraph (1) of this subsection.

"(4) Notwithstanding any other provision of this section, the Regional Corporation may, if authorized by an amendment to its articles of incorporation, purchase, and for that purpose its shareholders may sell, any or all shares of its Native common stock then issued and outstanding with payment out of unreserved or unrestricted earned surplus of the corporation, or, if there is no earned surplus, out of its net profits for the fiscal year in which the purchase is being made and the preceding fiscal year except when the corporation is unable to pay its debts as they become due in the usual course of business; in determining such net profits, the net profits derived from the exploration or liquidation of timber resources and subsurface estate may be determined without consideration of depletion of those assets resulting from lapse of time, consumption, liquidation, or exploration of those assets. Shares of stock purchased pursuant to this paragraph shall become nonvoting treasury stock, or may be canceled by the Regional Corporation in accordance with law.

"(5) The lapse of the right to vote in the holder of Native common stock upon a transfer to him by inheritance or otherwise prior to the effective date of this Act may be restored by the adoption of an amendment to the articles of incorporation to such effect: *Provided,* That such voting rights may be restored only with respect to shares of Native common stock held by a Native or a descendant of a Native.

"(6) Notwithstanding any provision of Alaska law, other than those provisions which relate to proxy statements and proxy solicitations and except as otherwise provided in section 7b—

"(A)(i) Any amendment to the articles of incorporation of a Regional Corporation authorized by this subsection or subsection (g) of this section, a transfer of assets made pursuant to section 7a, and a resolution described in paragraph 2(C) of this subsection or subparagraph (B) of this paragraph shall be approved in the following manner:

"(a) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual or a special meeting of shareholders.

“(b) A written or printed notice setting forth the proposal or a summary of the changes to be effected, or the proxy statement if one is required under subclause (a) of this clause shall be given to each shareholder of record entitled to vote not less than fifty nor more than sixty days before the date of the meeting, either personally or by mail.

“(c) At the meeting a vote of the shareholders entitled to vote shall be taken on the proposal and it shall be approved if it receives the affirmative votes required under clause (ii).

“(d) A number of proposals may be submitted to the shareholders and voted upon at one meeting.

“(e) With respect to any amendment of the articles of incorporation of a Regional Corporation authorized by this subsection or subsections (g)(1) and (g)(3) of this section, the effect of which would be to end the restrictions on alienation for all classes of stock in the corporation, if the holders of at least one-third of the outstanding shares of Native common stock entitled to be voted petition the board of directors to adopt and submit to a vote of the shareholders a resolution to make that amendment to the articles of incorporation, the board of directors shall adopt the resolution and submit it to a vote of the shareholders as provided for in subclauses (a)–(d) of this clause: *Provided,* That a person or group seeking to obtain signatures on such a petition shall, not less than ten days before starting to obtain such signatures, file a written statement with the board of directors and the State agency having jurisdiction over proxy statements and solicitations, which statement shall contain no materially false or misleading statement or omission with respect to the proposed amendment, shall disclose the identity or identities of the person or persons organizing the effort to obtain signatures on the petition, and shall also fairly and fully disclose the nature and efforts of the proposed amendment if it is adopted: *Provided further,* That if, after ten days from such filing of the statement, there is no judicial or administrative order then in effect which directs that corrections be made to the statement or enjoins the solicitation of shareholders' signatures on the petition, then shareholders may begin to be solicited to sign the petition, and a copy of the statement shall be given to each shareholder before that shareholder is solicited to sign the petition.

"(ii) In order for an amendment to the articles of incorporation, land transfer or resolution to be approved pursuant to this paragraph, the proposal must be voted upon by at least 51 per centum of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote of at least 50 per centum of the outstanding shares of Native common stock entitled to be voted or an affirmative vote greater than 50 per centum of the shares voted, or both to approve any such proposal;

"(iii) Any other amendment to the articles of incorporation not specified in clause (i) of this subparagraph shall be approved in accordance with the articles of incorporation, bylaws or applicable law.

"(B) If the results of a shareholder vote under paragraph (2) of this subsection is the extension of restrictions against alienation, a stockholder who voted against the extension or in favor of the termination of restrictions, as the case may be, may demand and receive payment from the corporation for all of his or her shares but only if contemporaneously with the vote the shareholders of the Regional Corporation adopt a resolution expressly providing for such right. Except as otherwise provided in subparagraph (D), the procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this paragraph.

"(C) The stockholders of a Regional Corporation who adopt a resolution pursuant to subparagraph (B) of this paragraph may also provide in such resolution that the Native common stock restrictions for the same period then applicable to the stock, or that the value of the land or any interest therein received by the Regional Corporation pursuant to this chapter, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the Regional Corporation.

"(D) The stockholders of a Regional Corporation who adopt a resolution pursuant to subparagraph (B) of this paragraph may also provide in such resolution that payment to a dissenting shareholder shall be made by the corporation through issuance to such shareholder of a nonnegotiable debenture in the principal amount of the payment due, which debenture shall be secured either by a payment bond issued by an insurance company or financial institution, by the deposit in escrow of securities or property having a fair market value equal to at least 125 per centum of the face amount of the debenture, or by a lien upon the real property interests of the corporation other than lands or any interest therein which are committed by the corporation to Native traditional or cultural uses and, in the case of a Regional Corporation, its timber resources and subsurface estate. The debenture shall bear interest, payable semiannually, beginning as of the date of the corporation elected to extend stock restrictions at the rate applicable on such date to obligations of the United States having a comparable maturity. The principal amount of the debenture and any undistributed interest shall be payable at any time at the option of the corporation or, if not so called, shall be paid to the former shareholder, or his heirs, on December 18, 1991, or, if the stock restrictions otherwise would have expired on a later date, then on such date or five years after the date of the election, whichever first occurs.

"(7) If the results of a shareholder vote under paragraph (2) of this section or subsection (a) of section 7b is the removal of restrictions on alienation otherwise imposed by paragraph (1) of this subsection, the Regional Corporation may nevertheless, prior to the termination of such restrictions, impose any restrictions upon native common stock permitted under applicable law as well as—

"(A) the denial of voting rights to any holder of Native common stock who is not a Native or a descendant of a Native, and

"(B) the granting to the corporation, or to the corporation and a stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's Native common stock (whether issued before or after the adoption of the restriction) prior to the sale or transfer of such stock (other than a transfer by inheritance) to any other party, including a transfer in satisfaction of a lien, writ or attachment, judgment execution, pledge or other encumbrance.".

SEC. 5. The Alaska Native Claims Settlement Act is further amended by adding a new section to read as follows:

"SEC. 7a. (a)(1) A Native Corporation may convey some or all of its assets, including title to the surface and/or subsurface estate of land, or any interest therein, to a qualified transferee entity for no consideration or for such consideration as its shareholders may approve.

"(2) A qualified transferee entity is an entity organized pursuant to or recognized by State or Federal law which—

"(A) has a membership composed of persons whose interest in the entity is not transferable;

"(B) provides membership in the entity for every person who holds Native common stock in the Native Corporation making the transfer of assets on the day before the date of such transfer, which membership shall terminate at such stockholder's death; and

"(C) in addition to the persons described in paragraph (B) of this subsection, accepts as new members only Natives and descendants of Natives.

"(3) In addition to the authority and powers vested in such entity by State or Federal law, a qualified transferee entity is authorized to—

"(A) limit its membership to Natives and descendants of Natives, except as provided in subsection (2)(B) of this subsection;

"(B) distribute case or other assets to its members, except that such entity shall not convey fee title to land, or any interest therein, except to the extent authorized or required by sections 14(c) and 21(j) of this Act; and

"(C) exchanges and/or interests therein pursuant to the provisions of section 22(f) of this Act and section 1302(h) of the Alaska National Interest Lands Act.

"(b) A conveyance of assets pursuant to this section must be approved by a prior vote of the shareholders and shall be subject to such terms and conditions as the shareholders may approve.

"(c) Section 21(d) of this Act shall continue to apply to land, or any interest therein, conveyed by a Native Corporation to a qualified transferee entity pursuant to this section.

"(d)(1) An asset subject to section 7(i) of this Act conveyed pursuant to this section shall remain subject to section 7(i) to the same extent such asset would have been subject if the conveyance had not occurred.

"(2) A Regional Corporation shall not convey assets subject to section 7(i) of this Act pursuant to this section to more than one qualified transferee entity. Prior to receiving a conveyance of an asset subject to section 7(i), a qualified transferee entity shall agree in writing to be bound by the provisions of the agreement dated June 29, 1982, among and between the parties to the Aleut Corporation, and others, versus Arctic Slope Regional Corporation (Civ. Act. A75–53 D. Ak.) and to waive its sovereign immunity, if any, with respect to any claims arising under section 7(i) or this subsection. The Regional Corporation, or in the case of its dissolution another single entity designated by its shareholders or the United States district court, as appropriate, shall be responsible for administering the provisions of both section 7(i) and the aforementioned agreement dated June 29, 1982, with respect to all assets subject to section 7(i) conveyed by such corporation pursuant to this section.

"(3) Subsequent to the conveyance of an asset subject to section 7(i) by a Regional Corporation, such asset shall continue as security for the payment by such corporation, or its successor entity, of all revenues which the corporation is obligated to distribute to other Regional Corporations pursuant to section 7(i).

"(e)(1) If a shareholder vote described in subsection (b) approves a conveyance by a Native Corporation of an asset pursuant to this section, a stockholder who voted against the conveyance may demand and receive payment from the corporation for all of his or her shares but only if contemporaneously with the vote the shareholders of the Native Corporation adopt a resolution expressly providing for such right. The procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this paragraph.

"(2) A resolution described in paragraph (1) of this subsection may also provide that the Native common stock of such Native Corporation shall be valued only as restricted stock (having the same restrictions for the same period then applicable to the stock) or that the value of the land, or any interest therein, received by the Regional Corporation pursuant to this Act, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the Regional Corporation.".

SEC. 6. The Alaska Native Claims Settlement Act is further amended by adding a new section to read as follows:

"SEC. 7b. (a) If the Bristol Bay Native Corporation or any village corporation located in the Bristol Bay region so elects pursuant to section 7(h)(2), a vote on the question of whether to continue restrictions on the alienation of Native common stock shall be conducted pursuant to the following procedures:

"(1) On or before December 18, 1991, the shareholders of the corporation shall vote on whether to extend the restrictions on alienation of Native common stock described in section 7(h)(1) for such period, not less than twenty years nor more than fifty years, as the Native common stockholders may approve by the adoption of an amendment to the articles of incorporation to that effect. In the event restrictions upon stock alienation are extended pursuant to this paragraph, the corporation may elect before the expiration of such extension period, or any successor extension period, further to extend the restrictions for such additional period, not less than twenty years nor more than fifty years, as the Native common stockholders shall approve in like manner.

"(2) If the corporation does not conduct a vote pursuant to paragraph (1) or if the shareholders defeat a resolution that the restrictions on alienation be continued, the shareholders shall adopt a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate. If a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate is not voted upon or approved, the restrictions shall terminate one year from the date of the vote disapproving the resolution to extend such restrictions or on December 18, 1991, whichever later occurs. On the date of termination all Native common stock previously issued shall be deemed canceled, and shares of stock of the appropriate class shall be issued to each stockholder share for share, subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or in agreements between the corporation and individual shareholders.

"(3) Notwithstanding any provision of Alaska law, other than those provisions which relate to shareholder rights of petition and to proxy statements and proxy solicitations—

"(A) Any amendment to the articles of incorporation of the corporation authorized by this section, section 7(g) and section 7(h) (4) and (5), a transfer of assets made pursuant to section 7a, and a resolution described in paragraph (2) of this subsection of paragraph (2) of subsection (b) shall be approved in the following manner:

"(i) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual or a special meeting of shareholders.

"(ii) A written or printed notice setting forth the proposal or a summary of the changes to be effected shall be given to each shareholder of record entitled to vote not less than fifty nor more than sixty days before the date of the meeting, either personally or by mail.

"(iii) At the meeting a vote of the shareholders entitled to vote shall be taken on the proposal and it receives the affirmative votes required under subparagraph (B).

"(iv) A number of proposals may be submitted to the shareholders and voted upon at one meeting.

"(B) In order for an amendment to the articles of incorporation, land transfer or resolution to be approved pursuant to this paragraph, the proposal must be voted upon by at least 51 per centum of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote of at least 50 per centum plus one of the shares voted: *Provided,* That the stockholders may require a minimum vote of more than 51 per centum of the outstanding shares of Native common stock entitled to be voted or an affirmative vote greater than 50 per centum of the shares voted, or both, to approve any such proposal.

"(C) Any other amendment to the articles of incorporation not specified in subparagraph (B) of this paragraph shall be approved in accordance with the articles of incorporation, bylaws or applicable law.

"(b)(1) If the result of a shareholder vote under subsection (a) of this section is the extension of restrictions against alienation, a stockholder who voted against the extension may demand and receive payment from the corporation for the fair value of all of his or her shares. Unless longer periods of time are authorized in the bylaws of the corporation the procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed to the extent such right is made available pursuant to this subsection.

"(2) The stockholders of a corporation may adopt a resolution, concurrent with the vote authorized under subsection (a), which provides that, in the event dissenters' rights are exercised, the Native common stock shall be valued only as restricted stock (having the same restrictions for the same period made applicable to the stock by the vote) or that the value of the land or any interest therein received by the corporation pursuant to this Act, as amended, which is committed by the corporation to Native traditional or cultural sues or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the corporation.

"(3) The stockholders of a corporation who adopt a resolution pursuant to paragraph (2) of this subsection may also provide in such resolution that payment to a dissenting shareholder shall be made by the corporation through issuance to such shareholder of a nonnegotiable debenture in the principal amount of the payment due, which debenture shall be secured either by a payment bond issued by an insurance company or financial institution, by the deposit in escrow of securities or property having a fair market value equal to at least 125 per centum of the face amount of the debenture, or by a lien upon the real property interests of the corporation other than lands or any interest therein which are committed by the corporation to Native traditional or cultural sues and, in the case of Bristol Bay Native Corporation, its timber resources and subsurface estate. The debenture shall bear interest, payable semiannually, beginning as of the date of the corporation elected to extend stock restrictions at the rate applicable on such date to obligations of the United States having a comparable maturity. The principal amount of the debenture and any undistributed interest shall be payable at any time at the option of the corporation or, if not so called, shall be paid to the former shareholder, or his heirs, on December 18, 1991, or, if the stock restrictions otherwise would have expired on a later date, then on such date or five years after the date of the election, whichever first occurs.".

SEC. 7. The Alaska Native Claims Settlement Act is further amended by adding a new section to read as follows:

"SEC. 7c. Nothing in this Act shall be construed as enlarging or diminishing or in any way affecting the scope of any governmental authority of a federally recognized tribe, traditional Native council or Native council organized pursuant to the Indian Reorganization Act, as amended, or any right, privilege or immunity of Alaska Natives as Native Americans in their relationship with the Government of the United States.".

SEC. 8. Section 8(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1607(c)) is amended to read as follows:

"(1) The provisions of sections 7 (g), (h), and (o) and section 7b of this Act relating to Regional Corporations shall apply in all respects to Village Corporations, Urban Corporations and Native groups; except that (A) audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate; and (B) subject to the provisions of paragraph (2) of this subsection, restrictions on the alienation of Native common stock of such corporations, inchoate rights thereto and any dividends paid or distributions made with respect thereto shall continue after December 18, 1991.

"(2) The restrictions on alienation of Native common stock of Village Corporations, Urban Corporations and incorporated Native groups may be removed by the adoption of an amendment to the articles of incorporation to such effect: *Provided,* That a shareholder vote on an amendment calling for the removal of such restrictions may be held once before Decem- ber 18, 1991, and, if such amendment shall not be adopted, subsequent votes on a like amendment may be held not more frequently than at annual intervals after December 18, 1991: *Provided further,* That stockholder votes to amend the articles of incorporation of a Native corporation pursuant to this paragraph shall be held in accordance with the provisions of subsections 7(h) (2) and (6) or section 7b, as the case may be, except that the form of a resolution concerning restrictions on alienation must be a resolution to terminate such restrictions and a village corporation may decide, in accordance with the provisions of subsection 7(h)(6)(B) to grant dissenting rights to shareholders who vote in favor of such a resolution which does not pass.".

SEC. 9. Section 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1613) is amended to add the following new paragraph:

"(i) Authorization for conveyance of subsurface to village entities:

"(1) A Regional Corporation may convey any subsurface estate owned by such corporation to a village entity which acquired and still owns the surface estate pursuant to this Act.

"(2) Notwithstanding any conveyance under this paragraph the Regional Corporation shall receive the 30 per centum of the revenues from the development of the subsurface estate it would have retained had there been no such conveyance.

"(3) Any conveyance under this paragraph shall be subject to the provisions of subsections 7a(b)–(e) as if the village entity were a qualified transferee entity. The document or documents effecting such conveyance shall be recorded by the Regional Corporation, together with copies of subsections 7a(b)–(e) and this subsection, in the land records of the appropriate recording district.

"(4) The village entity to which any subsurface estate is conveyed pursuant to this subsection may not convey or otherwise transfer all or any part of such subsurface estate to any other entity without the express consent of the transferor Regional Corporation.".

Sec. 10. Section 21(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1620(d)(1)) is amended to read as follows:

"(1) All land and interests therein conveyed, pursuant to this Act, to a Native individual, Native group, village or Regional Corporation or corporation established pursuant to section 14(h)(3) of this Act shall, so long as such land and interests therein are not developed or leased to third parties or are used solely for the purposes of exploration, be entitled from the date of their conveyance to immunity from—

"(A) adverse possession and similar claims based upon legal theories of estoppel;

"(B) real property taxes by any governmental entity, including Federal, State, or local;

"(C) judgment resulting from any claim based upon the laws of bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally; and

"(D) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native group or any officer, director, or stockholder of any such corporation or group.

Land to which this paragraph applies shall not be considered developed solely as a result of the construction, installation, or placement upon such land of any structure, fixture, device, or other improvement intended to enable, assist, or otherwise further the subsistence or other customary or traditional uses of such land: *Provided further,* That the immunities provided for in this paragraph shall be in addition to those immunities or other benefits to which such land or interests therein may be entitled under the Alaska National Interest Land Conservation Act: *And provided further,* That the immunities provided for in this paragraph shall not apply to any judgment in any action at law or equity or to any arbitration award arising out of any claim regarding revenue sharing under section 7(i): *And provided further,* That land to which this paragraph applies and land which is conveyed pursuant to section 7a of this Act as amended shall be subject to condemnation for public purposes in accordance with the provisions of applicable State law.".

SEC. 11. Subsection 21(f) of the Alaska Native Claims Settlement Act (43 U.S.C. 1620(f)) is amended by deleting "Until January 1, 1982," and replacing such language with "Until such time as the limitation upon alienation of Native common stock has been removed pursuant to section 7(h)(2) and section 7b of this Act,".

SEC. 12. Section 28 of the Alaska Native Claims Settlement Act (43 U.S.C. 1625) is amended by replacing the final clause of the first sentence, "through December 31, 1991."

with the following: "through the earlier of the day after (i) the date on which the corporation (1) issues (other than by descent or devise) any shares of stock which will not be issued solely to Natives or descendants of Natives or to entities established for the sole benefit of Natives or descendants of Natives or (ii) the date on which the corporation removes the limitation on alienation of Native common stock as provided for in section 7(h)(2) and section 7b of this Act.".

After the next sentence, add the following: "For the purpose of determining the applicability of the registration requirements after such date of the Securities Exchange Act of 1934 (48 Stat. 74), as amended, holders of Native common stock shall be excluded from the calculation of the number of shareholders or record pursuant to section 12(g) thereof. The provisions of the Investment Company Act of 1940 shall not, in any event, apply to any corporation organized pursuant to this chapter until January 1, 2001, at the earliest.".

SEC. 13. Section 10 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611) is amended by adding the following new subsection:

"(c) The United States District Court for the District of Alaska is hereby vested with exclusive original jurisdiction over any action challenging the constitutionality of sections 7a, 7(g), 7(h), 8(c), and 8(i) of this Act. Such action shall be heard and determined by court of three judges as provided in section 2284 of title 28, United States Code, with a direct appeal from any final judgment to the United States Supreme Court. If the United States district court should determine that any of the aforementioned sections violate the fifth amendment to the United States Constitution, in fashioning appropriate relief, the court shall not enter a money judgment against the United States, it being the express intention and direction of Congress that in no circumstances shall the enactment of this Act result in any liability on the United States.".

SEC. 14. Section 30(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1627(b)) is amended to delete the phrase "prior to December 19, 1991" and insert in lieu thereof the phrase "while the Native common stock of all corporations subject to such merger or consolidation remains subject to restraints on alienation.".

SEC. 15. Section 27 of the Alaska Native Claims Settlement Act (43 U.S.C. 1628) is amended to read as follows:

"The provisions of this Act, as amended are severable. If any provision of the Act is determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision.".

SEC. 16. Section 29 of the Alaska Native Claims Settlement Act (43 U.S.C. 1626) is amended to insert the phrase ", including any stock issued under section 7(9) (2) or (3) to Natives who have attained the age of sixty-five and any dividends thereon," after the phrase "under this chapter" in subsections (a) and (b).

○

II

99TH CONGRESS
2D SESSION

S. 2370

To allow the Francis Scott Key Park Foundation, Incorporated to erect a memorial in the District of Columbia.

IN THE SENATE OF THE UNITED STATES

APRIL 24 (legislative day, APRIL 21), 1986

Mr. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To allow the Francis Scott Key Park Foundation, Incorporated to erect a memorial in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Francis Scott Key Park Foundation, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, is authorized to erect a memorial on public grounds in the District of Columbia in honor and in commemoration of Francis Scott Key, the author of the words to "The Star Spangled Banner," our National Anthem, who lived and practiced law in Washington, District of Columbia at the time he penned those immortal words.

SEC. 2. (a) The Secretary of the Interior is authorized and directed to select, with the approval of the National Commission of Fine Arts and the National Capital Planning Commission, a suitable site on public grounds in the District of Columbia upon which may be erected the memorial authorized in the first section of this Act: *Provided*, That if the site selected is on public grounds belonging to or under the jurisdiction of the government of the District of Columbia, the approval of the Mayor of the District of Columbia shall also be obtained.

(b) The design and plans for such memorial shall be subject to the approval of the Secretary of the Interior, the National Commission of Fine Arts, and the National Capital Planning Commission: *Provided*, That if the Secretary of the Interior, the National Commission of Fine Arts, or the National Capital Planning Commission fails to report his or its approval of or specific objection to such design and plans within ninety days of their submission, his or its approval shall be deemed to be given.

(c) Neither the United States nor the District of Columbia shall be put to any expense in the establishment of the memorial.

SEC. 3. The authority conferred by this Act shall lapse unless (1) the erection of the memorial is commenced within five years from the date of enactment of this Act, and (2) prior to groundbreaking for the actual construction on the site funds are certified available in an amount sufficient, in the judgment of the Secretary of the Interior, to insure completion of the memorial.

○

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator **Stevens**. Thank you very much, Mr. Chairman. I ask that you put my statement in full in the record. Since it is somewhat redundant to yours, I will just summarize it.

Senator **Murkowski**. The statement will be entered into the record.

Senator **Stevens**. I do commend you and Congressman Don Young for your efforts to encourage public comment on this issue. To my knowledge, there has been more testimony on this bill so far than any issue other than Alaska statehood. Even the Lands Act, as far as Alaskan hearings, did not have this many hearings. For the record, we are still completing the summaries for the workshop hearings that I conducted Juneau, Sitka, and Ketchikan.

I think the Alaska Native Land Claims Settlement Act broke new ground in American Indian law. Those of us who served on the 1971 Conference Committee that actually wrote that act—and there are only two of us remaining in Congress now—had high hopes for the land settlement. To a large extent, those hopes have been fulfilled.

I believe the settlement opened new doors to Natives throughout Alaska. It also added the dimension of almost $1 billion to the Alaska economy. In my judgment, all Alaskans, Native and non-Native, have benefited from the settlement which has become an integral part of the economic and social fabric of our great State.

Clearly without the 1971 settlement, the oil and gas development history written over the past 15 years, including the impressive royalty and tax income that the State of Alaska has received, would not have been possible.

The bills before this subcommittee today focus on the other side of the ANCSA story. They are designed to correct problems created by the slowness of the Federal Government in implementing the 1971 settlement, slowness caused primarily by the long battle over the Alaska National Interest Lands Conservation Act.

Although there is much work left to be done, the basic approach to the bills—that is, the extension of stock alienation restrictions and tax protections for undeveloped Native land beyond 1991—in my judgment is sound. The Federal Government must make good on the promises it made to our Native people 15 years ago. Ensuring the success of the land settlement is in the best interest of all Alaskans and, I believe, all Americans.

But as you have pointed out, Mr. Chairman, it is imperative that the 1991 amendments not create new problems for those who have already been forced to spend tens of millions of dollars on ANCSA-related litigation. I know you share my concern on this point and that the subcommittee will carefully review the amendments to ensure that their long-term effect is adequately assessed and their legal basis is fully explored.

In particular, in my judgment the subcommittee should further refine the amendments to put completely to rest the fear that they will exacerbate the controversy over the concept of Native sovereignty in Alaska.

I have been and remain opposed to the creation by Federal action of any additional claims to sovereignty in Alaska. The Alaska Statehood Act vested sovereignty in our new State. No subsequent Federal action should attempt to diminish the State of Alaska's authority.

At the start of the 1991 legislative effort, as you have stated, the congressional delegation for Alaska announced it would oppose any effort to use the 1991 amendments to advance the arguments of sovereignty proponents. When concerns about the impact of the amendments on the sovereignty debate surfaced in Alaska, the delegation pledged to refine the amendments to meet those concerns.

In its revision of the 1991 amendments, the House directly addressed sovereignty-related concerns. I hope this subcommittee will consider adding language to make it aboslutely clear, as you also have stated, that the amendments are not intended to affect what is probably the most important question in the sovereignty debate: That is, whether lands conveyed pursuant to ANCSA can be considered Indian country.

I believe it is important to keep the 1991 bill on track. The fear over 1991 in rural Alaska has heightened the controversy over sovereignty. The quicker that fear is eliminated, the better the chances will be for a rational, nondivisive resolution of the sovereignty question.

Mr. Chairman, I look forward to working with you and the other members of the subcommittee on the 1991 amendments. I am really pleased at the amount of work you and your staff have put into this issue as demonstrated by your opening statement already, and I appreciate your allowing me to be with you here today. Unfortunately, I have another committee meeting at 11, but I intend to stay with you until then.

I do hope that we can develop some specifics here. If people have criticisms about this bill, I hope we can get specific about how they would change the bill because, in my judgment, the bill must pass.

[The prepared statement of Senator Stevens follows:]

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

Mr. Chairman, this hearing is the 12th in a series of hearings and workshops held in Alaska and Washington on the question of how the Alaska Native Claims Settlement Act should be amended to meet the problems associated with 1991, the year in which existing stock alienability restrictions and tax protections will terminate. I commend you and Representative Don Young for your efforts to encourage public comment on this important issue.

As you know, I conducted workshops on 1991 in Juneau, Sitka, and Ketchikan earlier this year. My office is nearly finished preparing summaries of these workshops.

The Alaska Native Claims Settlement Act broke new ground in American Indian law. Those of us who served on the 1971 conference committee that wrote the act—and only two of us remain in Congress—had high hopes for the land settlement. To a large extent, those hopes have been fulfilled.

The settlement opened new doors to Native throughout Alaska. It also added the dimension of almost $1 billion to the Alaska economy. In my judgment, all Alaskans—Native and non-Native—have benefited from the settlement, which has become an integral part of the economic and social fabric of our great State. And, clearly, without the 1971 settlement, the oil and gas development history written over the past 15 years, including the impressive royalty and tax income that the State of Alaska has received, would not have been possible.

The bills before this subcommittee today focus on the other side of the ANCSA story. They are designed to correct problems created by the slowness of Federal Government in implementing the 1971—slowness caused primarily by the long battle over the Alaska National Interest Lands Conservation Act.

Although there is much work left to be done, the basic approach of the bills—extension of stock alienation restrictions and tax protections for undeveloped Native land beyond 1991—is sound. The Federal Government must make good on the promises that it made to the Natives 15 years ago. Ensuring the success of the land settlement is in the best interest of all Alaskans and all Americans.

Mr. Chairman, it is imperative that the 1991 amendments not create new problems for thos who have already been forced to spend tens of millions of dollars on ANCSA-related litigation. I know that you share my concern on this point and that the subcommittee will carefully review the amendments to ensure that their long-term effect is adequately asessed and that their legal basis is fully explored.

In particular, the subcommittee should further refine the amendments to put completely to rest the fear that they will exacerbate the controversy over the concept of Native sovereignty in Alaska. I have been, and remain, opposed to the creation by Federal action of any additional claims to sovereignty in Alaska. The Alaska Statehood Act vested sovereignty in a new State—no subsequent Federal action should attempt to diminish the State of Alaska's authority.

At the start of the 1991 legislative effort, the Alaska congressional delegation stated that it would oppose any effort to use the 1991 amendments to advance the arguments of sovereignty proponents. When concerns about the impact of the amendments on the sovereignty debate surfaced in Alaska, the delegation pledged to refine the amendments to meet those concerns.

In its revision of the 1991 amendments, the House directly addressed sovereignty-related concerns. I hope that the subcommitee will consider adding language to make it absolutely clear that the amendments are not intended to affect what is probably the most important question in the sovereignty debate—whether lands conveyed pursuant ot ANCSA can be considered Indian country.

It is important to keep the 1991 bill on track. The fear over 1991 in rural Alaska has exacerbated the controversy over sovereignty. The faster that fear is eliminated, the better the chances will be for a rational, nondivisive resolution of the sovereignty question.

Mr. Chairman, that concludes my remarks. I look forward to working with you and the other members of the subcommittee on the 1991 amendments. Thank you for allowing me to testify today.

Senator MURKOWSKI. Thank you, Senator Stevens. I think it is interesting to note your comment with regard to the original lands claim legislation. There are only two members currently left?

Senator STEVENS. That is right.

Senator MURKOWSKI. And how fast that process changes.

Senator STEVENS. Congressman Udall and I are the only two remaining members of the conference committee.

Senator MURKOWSKI. Only two left.

Well, we are most appreciative that you are here this morning, and I certainly appreciate your input in the development of a position on where we are on 1991.

I would call our first witness, Mr. William P. Horn, Assistant Secretary, United States Department of the Interior, Fish and Wildlife and Parks.

Mr. Horn, because of your extensive knowledge of this matter and Alaska in general and having had the opportunity to read your lengthy testimony this morning, I am going to allow you adequate time to communicate the position of the Department of the Interior because I think it is absolutely vital that we have a full explanation of the concerns of the Department. And I do not mean to belittle the testimony of other witnesses by any means, but yours does express concerns, and those concerns need examination.

Senator STEVENS. Would you indulge me one more time?

Senator MURKOWSKI. Yes, sir.

Senator **Stevens**. My good friend, the photographer, asked me to sit up. I wanted to tell him that Tony and I are sitting up.

[Laughter.]

STATEMENT OF WILLIAM P. HORN, ASSISTANT SECRETARY, FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. **Horn**. Mr. Chairman, thank you very much.

I appreciate the opportunity to appear here before this subcommittee to discuss this important matter and to outline the Department's concerns concerning S. 2065.

As you know, Mr. Chairman, the Department has actively, and may I say very extensively, been reviewing this legislation and the 1991 issues for a considerable period of time. While we have not reached a final position on all of its provisions, we know that we cannot support the legislation in its present form.

While I am prepared to discuss with the committee today most of the areas of greatest concern, I would like to note that the Secretary has a long-standing commitment to the Alaska Federation of Natives not to finalize the Department's position without providing AFN an opportunity to discuss this issue directly with him. And it is my understanding that we are going to try to schedule a session of that type later on this week.

Senator **Murkowski**. That is my understanding.

Mr. **Horn**. While we are sympathetic to the fears that give rise to this bill and certainly support the goal of there being meaningful opportunity for the continued Native control of Alaska Native lands, we believe this bill goes beyond what is necessary to achieve that result. And not only do we disagree with automatically extending the restraints against alienation as to all Native corporation stock, but the bill makes many other changes to ANCSA that in our mind are unrelated to the 1991 deadline.

We oppose making such wholesale revisions in the structure of the original act, lest we undo the progress which has occurred under this settlement to date. Before discussing the particular provisions of S. 2065, I would like to reiterate the administration's policy toward Alaska's Natives. These will help explain our concerns about the pending measure:

One, we believe the Federal Government must fulfill its obligations according to the letter and spirit of the 1971 act;

Two, there should be no alterations in ANCSA's section 2(b) policy. That section makes explicit the act's policy of rapid settlement, conformance with the real and economic and social needs of Alaska Natives, no litigation, maximum participation by Alaska Natives, no permanent racial institutions or privileges, no reservation system or lengthy wardship or trusteeship, and no new categories of property and institutions enjoying special tax privileges;

Three, we should facilitate appropriate opportunities for continued Native control of Native corporations and, in doing so, support the goal of economic self-sufficiency for Alaska Natives;

Fourth, we seek to minimize Federal intervention and control;

Fifth, there should be no termination of the special relationship with Alaska Natives, as a whole; and

Sixth, we cannot support any increases in or new Federal obligations or liabilities emanating from amendments to the original settlement.

With these policies in mind, I must note that S. 2065 makes several changes in ANCSA that could have long-range impacts on Native land policy in Alaska. We are persuaded that some of the bill's provisions are inconsistent with one or more of the above policies. We are particularly concerned about the following six general areas or provisions. Three of these involve corporate issues:

One is differentiating between stock held by Natives and nonnatives;

Two, allowing the issuance by Native corporations of new stock to children of Natives without consideration;

Three, mandating continuation of the prohibition against alienation of stock;

Fourth, allowing the formation of new groups under ANCSA entitled qualified transferee entities that may possess new privileges and immunities;

Fifth, creating new or extended tax privileges and land protection under section 21(d) of ANCSA and section 10 of the pending measure; and

Last, authorizing the conveyance of subsurface estates from regional corporations to village entities.

I would like to discuss some of these in greater detail.

While we are quite alarmed by some of the consequences of the bill, we also appreciate that there are very real differences between Native regional and village corporations 15 years after passage of the original act. I mention this because it bears directly on how we would propose to deal with some of the troublesome provisions of the bill.

In our opinion, most Native regional corporations have adjusted quite well to the realities of corporate existence. They have protected and expanded their economic bases and have employed their human and natural resources in a positive and sophisticated manner.

Village corporations, on the other hand, by and large, are in very different straits. Adjustment to corporate life in many instances has occurred slowly, and many have appeared to act more as societal as opposed to economic institutions. Moreover, many of these institutions are not viewed by their Native shareholders as corporations in any conventional economic sense.

Recognizing the fear of nonnative takeover that exists within the village corporations and being mindful of distinctions between regional corporations which are maturing into modern corporate life and village corporations which have not, we are prepared in many respects to treat regional and village corporations differently in our approach to the 1991 issues.

As a result of these crucial differences, we can support the automatic extension of alienation restraints on shares of stock by village shareholders within village corporations. However, we cannot support application of the automatic restraint extensions to regional corporations.

Unlike the villages, these regional economic institutions are and can be fully equipped to deal with the issues of Native control on much the same basis as other corporations in the lower 48 States. We believe therefore that major amendments to the current legislation are required, as we discussed.

Dealing with one specific—and that is the Native common stock created by section 2 of S. 2065—it, of course, establishes a special category of property rights for Natives that is woven throughout the remainder of the bill. We believe this special distinction between Native and nonnative shareholders contradicts the original policies and purposes of ANCSA, as iterated in section 2(b). As such, it would seriously undermine the structure of the original 1971 act. Moreover, the concept of Native common stock, we believe, is not necessary to guarantee Native ownership and control of regional or village corporations, and we would urge that this provision be deleted.

The second specific involves section 3 of the bill that authorizes the issuance of new stock to Natives born since the passage of ANCSA for no consideration. At least insofar as regional corporations are concerned, this would dilute the value of shares held by present shareholders and be unfair to Native families with few or no children.

While we understand the concern that new Natives feel left out of the original settlement, we believe this provision which overrides State law to the contrary is unwise. Any issuance of any new classes of stock by Native regional corporations should be for fair value and the law should so provide.

Village corporations may be a different matter. Since many are not acting and operating as full-bore economic institutions, the concept of dilution of value of stock in the hands of individual village corporation shareholders may not be particularly relevant. Therefore, we would like to make two suggestions. First, that the authority for corporations to issue new stock to raise capital should be expressly recognized.

And second, to provide for the participation in the corporate structure of Natives born after the passage of ANCSA, we would support amendments to allow the intrafamily conveyance of gifts of original stock to new family members. This would achieve the desired goal of giving new Natives a sense of participation in the settlement without penalizing those shareholders with few or no children. We also note that this approach could prevent complications or abuses arising from situations where Native parents are shareholders of different ANCSA corporations and whose children might receive a windfall under S. 2065 as written.

Probably the lynchpin concern that has taken a considerable amount of time by the Department in its review of this has been the extension of stock restraints. Section 4 would provide for the automatic and the indefinite extension of existing alienation restraints on all Native stock. And while a corporation could vote to remove these restrictions, the extension of the restrictions would occur as a matter of Federal law with no corporate action required. This obviously is a major change in the property rights and interests of current shareholders, and as such could create additional Federal liability.

The impact of these provisions, both the extension of alienation restraints for all Native stock and, in our opinion, the elimination of meaningful dissenters' rights, viewed separately or in combination, could lead a court to hold that the threshold of Federal liability has been crossed. Even if that were not the case, it is our opinion that such provisions are not good public policy insofar as basic shareholder rights are concerned.

At the same time, we are extremely sympathetic to the concerns of many Alaska Natives that the lifting of stock restrictions in 1991 could result in the unwitting loss of control of Native corporations, and thus Native lands, through improvident sale, neglect, or fraud.

What we object to is not the concept of continued Native control, but the method of control through mandated continued restrictions affecting all shareholders. We believe such a blanket extension of restraints is unnecessary for several reasons.

First, under ANCSA, corporations already have the right of first refusal to help preserve Native control. If a corporation objects to a shareholder's proposed stock sale to nonnatives, the corporation can purchase that stock itself to prevent the intended conveyance.

Second, voting trusts can be used to assure continued Native voting control and therefore discourage hostile corporate takeovers. Voting trusts already are recognized in Alaska corporate law, although restrictions such as a 10-year time limit make them less beneficial than they could otherwise be.

We are prepared to work with the Native leadership and with the committee to eliminate as a matter of Federal law any restrictions such as the 10-year time limit that reduce the practicality of utilizing the voting trusts. We also specifically could protect certain individual shareholder rights, such as the right to inspect corporate records or the right to bring shareholder derivative suits that otherwise may be lost to the trustee of a voting trust under current Alaska corporate law.

Furthermore, voting trusts could be limited to votes on certain types of issues such as mergers and consolidations or certain types of dispositions of assets if there is a concern that such mechanisms result in depriving individual shareholders of their right to be participants in election of directors or other aspects of corporate democracy.

Our fundamental point is that the currently available mechanism of the voting trust could be tailored through this bill to particular Native control concerns without damage to individual rights that we think are involved in the present measure. And we would support legislation to achieve that result.

Third, another alternative which we would support is the use of voluntary stock ownership trusts. Currently not recognized in Alaska corporate law, this mechanism would permit shareholders to place stock in trust for a term of years. During the period of the trust, the stock could not be sold, unless, of course, the trust agreement provided otherwise as, for example, upon majority vote of the shares placed in trust.

As with voting trusts, a shareholder electing to participate in an ownership trust could freely decide what rights accompanying the stock go into the trust so that no more control is surrendered than desired. Other shareholder rights could be protected, such as the right of inspection and the ability to bring derivative suits.

In our mind, if a majority of Native shareholders would be willing to vote under section 4 of the bill in favor of alienation restraints, the same majority should be willing to place their shares in a voting trust for certain types of decisions or in an ownership trust. Doing so would remove the Native corporation as a target for those persons or other corporations seeking to wrest control from the Natives, and of course this would occur without any damage or diminution of shareholder rights.

As a consequence, we think that these alternatives are a superior course of action, particularly for the regional corporations; and hence, we oppose the automatic extension of alienation as it applies to regional corporation stock.

The next concern involves section 5 and the qualified transferee entities, or QTE's as it has become known during our review process internally. We are persuaded that section 5, coupled with other sections of the bill, could lead to attempts to establish independent Indian communities similar to the Indian country or reservation system of the lower 48 States. Attempts to exploit this approach through litigation, in our mind, would surely result.

Such a consequence would clearly contravene the intent of ANCSA as expressed in section 2(b). And although we support the right of corporations to have the ability to transfer land to qualified transferee entities, in order to eliminate the problem of Indian country or the potential assertion of sovereignty claims, we would recommend that an express provision be added to bar the establishment of such Indian country, as defined in 18 U.S.C. 1151, along with an explicit statement that the United States does not bear the same trust responsibility for ANCSA-granted settlement lands as it does for Indian lands.

As we have stated, there are many valid social and cultural reasons for retaining strong Native identity, particularly with the land, but the possible extension of new Native government jurisdiction to nonmembers and the assertion of new authority at the expense of State authority undoes the previous settlement effort and goes far beyond what is necessary for Natives to control their destiny.

The next concern involves the authorization for the transfer of subsurface assets from regional to village corporations authorized in section 9. We are concerned about this provision. Because of the section 7(i) revenue sharing provisions, this section could adversely impact all regional corporations and therefore upset one of the more delicate balances sought to be achieved by ANCSA.

If the motivating force behind this provision is a desire of the village corporations to have a greater measure of control over development of subsurface resources so that they do not interfere with surface assets or traditional uses of the land, then we suggest that the provision be redrafted to focus on accommodation of such use of the surface and development of the subsurface resources.

Section 10 deals with automatic extensions of the Land Bank provisions that now largely exist in section 907 of the Alaska Lands Act. However, we are persuaded they go beyond the basic goal of protection and could create some unintended problems. We recognize that there have been problems in getting the Land Bank Program set up. Indeed, trying to come up with contractual definitions of difficult terms such as "development" and "compatibility" have really been the focus of the exercise.

We fortunately have recently completed and concluded our first Land Bank Agreement with the Gana-a'yoo Corp. and anticipate other agreements to be forthcoming in the near future. Hence, we think this is a very valuable program. We expect to see it accelerate sometime soon.

Of course, we know that one of the problems with the act was that some people saw section 907 as providing benefits to the conservation system units and conservation values in the land, whereas others saw that its primary values were to flow to the Native corporations. We at the Department think that it can serve both.

Therefore, we would like to work with the committee and with the Native leadership to basically refine section 10 so that we could come up with legislative definition of the terms "compatibility," a legislative definition of the terms of "development" and provide for some recordation mechanism so that these land bank benefits immunities can be provided automatically but with these terms appropriately defined so that all of the parties know what their positions and status are.

We had a couple of closing comments. One particular area that has been raised that we think needs to be addressed involves the treatment of stock in Federal programs. It has been suggested that if Native corporation stock becomes freely tradeable by 1991, many shareholders really will not benefit from such sales of shares as they might make because they will lose or at least suffer from sharply reduced Federal or State benefit programs. This is because many benefit programs have a means test and if stock can be sold, the value of the stock will be regarded as an asset for means test purposes, with the result that the Native might not receive benefits he would have received if his stock had been subjected to a restraint against alienation.

We have no objection to a provision which simply provided that whether or not Native stock is freely tradeable, the value of the stock and the proceeds from a sale thereof shall not be regarded as an asset of the shareholder for purposes of any means test under Federal or State laws. However, we strongly object to extending the reach of such a provision to include dividends or other income received by the shareholder in respect of stock he continues to own.

We believe that there properly is a distinction between preserving the asset value of the shares the shareholder received under the 1971 Settlement Act and the dividend income which they subsequently receive.

In conclusion, Mr. Chairman, we continue to support the original 1971 Settlement Act, and recognize that many issues must be worked out before we reach the 1991 deadline. In doing so, we need to make adjustments to the original act to make this innovative settlement work as originally intended without creating new, unintended problems.

With this in mind, Mr. Chairman, we are grateful to you and the Congress for leading the discussion on these issues, and we look forward to continuing our work with you, the Alaska Natives and the State of Alaska on this important issue.

That concludes my remarks. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Horn follows:]

STATEMENT OF WILLIAM P. HORN, ASSISTANT SECRETARY OF THE INTERIOR, BEFORE THE SENATE ENERGY SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION, CONCERNING S. 2065, A BILL TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

August 4, 1986

Mr. Chairman, I am pleased to be here today to discuss S. 2065, a bill "To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act and for other purposes." This legislation is intended to resolve what are known as the "1991" issues--those issues related, among other things, to expiration in the year 1991 of the restrictions on alienation of Native corporation stock.

As you know, Mr. Chairman, the Department actively has been reviewing this legislation and discussing its intent and impact with various Alaska Native groups. While we have not reached a final position on all of its provisions, we are far enough along to know that we cannot support this legislation in its current form. While I am prepared to discuss with you today most of the areas of greatest concern, I would like to note that we have a longstanding commitment with the leadership of the Alaska Federation of Natives (AFN) not to finalize our position without providing them an opportunity to discuss this issue directly with the Secretary. That meeting will occur just as soon as we complete our internal deliberations. Subject to that reservation, however, we see the need for substantial amendments to this bill.

Before I get to the substance of our testimony, Mr. Chairman, we would like to commend you for holding these hearings. As you know, the Department has appeared at two of your field hearings on this measure. We appreciate that opportunity, as it has helped us to understand the objectives of the legislation and the long-term policy implications of changes in the original law. We support the continuing efforts to resolve the 1991 issues, but in so doing, we must be careful not to undermine the carefully negotiated framework of the original Act. Unfortunately, S. 2065 in its current form may have such unintended consequences.

As you well know, Mr. Chairman, the Alaska Native Claims Settlement Act of 1971 (ANCSA) is a very unique statute. It provided a complex settlement of longstanding individual and group Native land claims in Alaska by use of an unusual corporation system, including individual stock ownership by Alaska Natives. Under the terms of ANCSA, these shares in Native corporations remain inalienable, except for a few special situations involving court decrees, until the end of 1991. As we move closer to this deadline, several parties have expressed concern that the unrestricted sale of Native stock could result in widespread loss of Native lands and rights through loss of ownership and control of these corporations. Underlying this fear is the apparent belief that 20 years is not long enough to secure a solid future for Alaska Natives. As a result, S. 2065 has been introduced which, among other things, automatically continues the restrictions against alienation of Native stock beyond 1991.

OVERVIEW

While we are sympathetic to the fears that give rise to this bill, and certainly support the goal of there being meaningful opportunity for the continued Native control of Alaska Native lands, we believe the bill goes far beyond what is necessary to achieve that result. Not only do we disagree with automatically extending the restraints against alienation as to all Native corporation stock, but the bill makes many other changes to ANCSA unrelated to the 1991 deadline. We oppose making such wholesale revisions in the structure of the original Act, lest we undo the progress which has occurred under this settlement to date.

Before discussing the particular provisions of S. 2065, perhaps we should reiterate this Administration's policies toward Alaska Natives. These will help to explain our concerns about the current bill:

1. We believe the Federal Government must fulfill its obligations according to the letter and spirit of the 1971 Act;

2. There should be no alterations in ANCSA's section 2(b) policy. Section 2(b) makes explicit the Act's policy of rapid settlement, conformance with the real economic and social needs of Alaska Natives, no litigation, maximum participation by Alaska Natives, no permanent racial institutions or privileges, no reservation system or lengthy wardship or trusteeship, and no new categories of property and institutions enjoying special tax privileges;

3. We should facilitate appropriate opportunities for continued Native control of Native corporations. We thus support the goal of economic self-sufficiency for Alaska Natives. This preserves the cultural benefits of Alaska Natives' owning their own land, and may avoid what otherwise could be undue concentration of economic power over the natural resources upon and under these lands;

4. We seek to minimize Federal intervention and control;

5. There should be no "termination" of the special Federal relationship with Alaska Natives; and

6. Finally, we cannot support any increases in, or new, Federal obligations or liabilities.

With these policies in mind, Mr. Chairman, I must note that S. 2065 makes several changes in ANCSA that could have long-range impacts on Native land policy in Alaska. Some of the bill's provisions are inconsistent with one or more of the above policies, while others simply are unrelated to the fundamental reason for these amendments, the expiration in 1991 of restrictions against the alienability of Native stock. For example, we particularly are concerned about the following provisions:

1. Corporate issues:
    a. Differentiating between stock held by Natives and non-Natives;
    b. Allowing the issuance by Native corporations of new stock to children of Natives without consideration; and
    c. Mandating continuation of the prohibition against alienation of stock;

2. Allowing the formation of new groups under ANCSA, entitled qualified transferee entities, with new privileges and immunities;

3. Creating new or extended tax privileges and land protection under section 21(d) of ANCSA (section 10); and

4. Authorizing the conveyance of subsurface estates from regional corporations to village entities.

Mr. Chairman, as we have noted, the Department has been intensively reviewing these proposed amendments and has consulted with various Alaska interests about the policy implications of these or any other changes to ANCSA. We have done so because our concerns are very real, yet we are aware of the deep conviction of the bill's proponents that these amendments are essential to the well-being of Alaska Natives. Throughout, we have voiced our deep concern that the breadth of these amendments could erode seriously the original Act. That is, this bill authorizes, for the first time, a clear and unmistakable retrenchment from the use of the corporate structure that formed the core of the settlement of Native claims in ANCSA. Rather than making changes to ANCSA to make the corporate system more flexible and easier to understand for Alaska Natives, this bill changes that structure in ways which make it less viable. The provisions for transfer of assets from corporations to tribal entities, the restrictions against sale to and inheritance of stock by non-Natives, and the mandated continuation of restrictions against the free alienability of stock all will have adverse consequences on ANCSA's structure.

While we are quite concerned about some of the consequences of the bill, we also appreciate that there are very real differences between Native regional and village corporations 15 years after passage of ANCSA. I mention this here because it bears directly on how we would propose to deal with some of the troublesome provisions of the bill.

Most Native regional corporations have adjusted quite well to the realities of corporate existence. They have protected and expanded their economic bases and have employed their human and natural resources in a positive and sophisticated manner. While some Native regional corporations are more successful than others, they represent well the corporate economic institutions of this Nation that served as their model. For the Native regional corporations, which are maturing as economic entities, little justification exists for altering their status or the rights of their individual Native owners.

Village corporations, on the other hand, by and large are in a very different situation from the regional corporations. Adjustment to corporate life has occurred slowly, if at all, in most of the village corporations. In some respects many have appeared to act more as societal than as economic institutions, which, while important for Native cultural purposes, nevertheless has inhibited their transition to a corporate structure so as to be able to defend themselves against outsiders' takeover attempts. Moreover, since the principal value of village corporation stock is in land which often is in traditional uses (i.e., subsistence), has not been economically developed and, therefore, either is difficult to value or has limited, if any, economic value, many of these institutions are not viewed by the Native shareholders as corporations in any conventional sense.

Recognizing the fear of non-Native takeover that now permeates the village corporations, and being mindful of the distinctions between regional corporations, which are maturing into modern corporate life, and village corporations which have not, we are prepared, in some respects, to treat regional and village corporations differently in our approach to the 1991 issues. In essence, while we believe the pending legislation exceeds a reasonable solution to the issues created by the 1991 timetable, we also believe that the impact on ANCSA and its objectives would be much greater from the application of the proposed changes to regional than to village corporations.

To the extent that 15 years of experience with ANCSA has taught us that, by and large, the village corporations are viewed by the Natives as being more nearly societal institutions than economic enterprises, and to the extent it is possible that it will always be that way, we believe that wise policy may require the Congress to provide reasonable statutory protections against the perceived threats to these village institutions. After all, one of the considerations underlying enactment of ANCSA was recognition of the importance of preserving Native culture.

On the other hand, ANCSA was more than a piece of social legislation. It was the settlement of land claims, at least some of which had the potential of great economic value, and it was a legislative attempt to promote Native economic self-sufficiency. The Natives who received stock in the corporations had a right to assume that, if the corporations were economically successful, they someday might be able to enjoy such economic benefits as might be realized from that stock. Given the legitimate expectations of the individuals who received the stock, and bearing in mind that at least the regional corporations have demonstrated that they have moved far towards meeting the expectations of the Congress that they become viable economic entities, we see no justification to change the 1991 provisions insofar as Native regional corporations are concerned.

CORPORATE ISSUES

a. Native Common Stock

Section 2 of S. 2065, dealing with "Native Common Stock", establishes a special category of property rights for Natives that is woven throughout several other sections of the bill. We believe this special distinction between Native and non-Native shareholders contradicts the original policies and purposes of ANCSA, especially the section 2(b) policy. As such, it would seriously undermine the structure of the original Act. The Administration is firmly opposed to the establishment in law of permanent, racially defined institutions.

The concept of Native Common Stock is not necessary to guarantee Native ownership and control of regional or village corporations. Section 7(h)(3) of ANCSA (as amended by 1401(a) of the Alaska National Interest Lands Conservation Act) already provides that Native corporations may restrict voting rights to Natives. I shall discuss later (see Extension of Stock Restrictions) other mechanisms that shareholders may utilize to protect themselves and their corporations from hostile takeovers.

The apparent purpose of the concept of Native Common Stock is to enable the corporation to have multiple classes of stock, one for Natives who would be able to exercise ultimate control over the corporation, while, at the same time, there could be one or more classes for investors who might be inclined to invest in the corporation, thereby providing the corporation with equity capital for its economic growth and development. However, as noted, the village corporations are not, in essence, economic institutions, at least in the normal sense of the corporate world. If there is justification for treating village corporations differently from regional corporations, it is because of the previously noted distinctions between their character. The village corporations, which apparently do not want to be treated as conventional corporations because of their cultural or societal orientation, have little, if any, justification for claiming they need Native and non-Native classes of stock in order to raise equity capital from investors. Investors invest in economic institutions.

In all events, if a corporation really is determined to issue stock to raise equity capital, and, at the same time, guard against non-Native control, it is perfectly free to do so in any number of ways. For example, it can limit the quantity of stock it issues. It also can form a subsidiary, transfer to the subsidiary the business assets and activities which it desires to be infused with outside investment capital, and offer shares of the subsidiary to the public in such quantities as it desires.

We therefore urge that this provision in S. 2065 be deleted. We believe it is both unnecessary and contrary to our strong opposition to legislation which establishes permanent institutions or privileges along racial lines.

b. New Natives

Section 3 of the bill authorizes the issuance of new stock without consideration to Natives born since the passage of ANCSA. At least insofar as regional corporations are concerned, this would dilute the value of shares held by present shareholders and be unfair to Native families with few or no children. While we understand the concern that new Natives feel left out of the original settlement, we believe this provision, which overrides State law to the contrary, is unwise. Any issuance of any new classes of stock by Native regional corporations should be for fair value and the law should so provide.

Village corporations may be a different matter. Since they primarily are not economic institutions, the concept of dilution of value of stock in the hands of individual village corporation shareholders does not appear to be particularly relevant.

We understand, however, that arguments have been made that existing language precludes the corporations from issuing new classes of stock and, therefore, from raising equity. We can support amendments that address that problem without undercutting the original settlement by diluting the value of stock held by individuals in regional corporations. First, the authority for corporations to issue new stock to raise capital should be expressly recognized. Second, to provide for the participation in the corporate structure of Natives born after passage of ANCSA, we would support amendments to allow the intra-family conveyance of gifts of original stock to new family members. This would achieve the desired goal of giving new Natives a sense of participation in the settlement without penalizing Natives with few or no children. We also should note that this approach would prevent complications or abuses arising from situations where Native parents are shareholders of different ANCSA corporations and whose children might receive a windfall under S. 2065 as written.

EXTENSION OF STOCK RESTRICTIONS

Section 4 would provide for the automatic and indefinite extension of alienation restraints on all Native stock. While a corporation could vote to remove these restrictions, the extension of the restrictions would occur as a matter of Federal law with no corporate action required. This obviously is a major change in the property rights and interests of current shareholders. This results from the fact that ANCSA was a settlement of both individual and group Native land claims which is now 15 years into its execution. To change a shareholder's rights and expectation to be able to alienate his or her stock from 1991 to now much later, if ever, in our view is not fair to the individual Native shareholder and could expose the Federal government to substantial litigation. This is a question we are reviewing closely with the Department of Justice, which has not completed its analysis.

Our objection to this automatic extension of alienation restrictions is compounded by the fact that the bill does not ensure that a vote on these restrictions will ever occur. If and when it does, the dissenter's rights provided for minority shareholders are very minimal, if not illusory. Dissenting shareholders are not given a right to be bought out unless the corporation expressly so provides.

Therefore, minority shareholders could be placed in the position where their shares, which represent their portion of the settlement of claims contemplated by ANCSA, are rendered valueless.

Even if dissenters are compensated, the bill would permit the value placed on such stock not to take into account most of the assets of the corporation (on the theory they are difficult to value) or would reduce the value by reason of the provision which says that certain dissenter's stock is to be valued as "restricted stock." Obviously restricted stock; i.e., stock subject to restriction on transfer, is not as valuable as stock not subject to restriction. Yet it is the restriction against alienability from which the dissenting shareholder is dissenting. To reduce the value of the dissenter's shares by reason of restrictions he opposes and which have been forced on him by Federal legislation is both ironic and unfair. Finally, the bill would eliminate the requirement that the dissenter's shares be paid for in cash.

These changes eliminate several shareholder protections provided under existing Alaska corporate law. Under Alaska law (and under the laws of most all jurisdictions), shareholders are entitled to be bought out if they dissent from certain major corporate actions (such as mergers) and must receive fair value for their shares in cash. Under S. 2065, all such rights are eliminated, so that individual shareholders have no assurance of their ability ever to realize actual value for the shares received in settlement of their land claims. We object to this abrogation of individual shareholder interests.

The effect of these provisions is to move ANCSA corporations further away from true economic institutions and closer to closed membership entities. It therefore jeopardizes some of the fundamental premises underlying the use of the corporate form in the original Act. The cumulative impact of provisions such as the extension of alienation restrictions for all Native stock and elimination of meaningful dissenter's rights could lead a court to hold that the Federal government is responsible for any loss to the shareholder. Even if that were not the case, such provisions are not good public policy insofar as basic shareholder rights are concerned.

At the same time, we are sympathetic to the concerns of many Alaska Natives that the lifting of stock restrictions in 1991 could result in the unwitting loss of control of Native corporations, and thus Native lands, through improvident sale, neglect or fraud. What we object to is the method mandating continued restrictions for all Native shareholders. We believe this method is unnecessary for several reasons.

First, under ANCSA, corporations already have a right of first refusal to help preserve Native control. If a corporation objects to a shareholder's proposed stock sale to non-Natives, the corporation can purchase that stock itself to prevent the intended conveyance.

Second, voting trusts can be used to assure continued Native voting control and, therefore, discourage hostile corporate takeovers. Voting trusts already are recognized in Alaska corporate law, although restrictions such as a 10-year time limit make them less beneficial than they otherwise could be. We already have discussed with AFN our willingness to eliminate as a matter of Federal law any restrictions, such as the 10-year time limit, that reduce the practicality of voting trusts. We also specifically could protect certain individual shareholder rights, such as the right to inspect corporate records or the right to bring shareholder derivative suits, that otherwise may be lost to the trustee of a voting trust under current State law. Furthermore, voting trusts could be limited to votes on certain types of issues, such as mergers and consolidations or certain types of dispositions of assets, if there is a concern that such mechanisms result in depriving individual shareholders of their right to be participants in election of directors or other aspects of "corporate democracy." Our point is that the currently available mechanism of the voting trust could be tailored to particular Native control concerns without the damage to individual rights involved in this bill. We would support legislation to achieve that result.

Third, another alternative which we would support is the use of voluntary stock ownership trusts. Currently not recognized in Alaska corporate law, this mechanism would permit shareholders to place stock in trust for a term of years. During the period of the trust, the stock could not be sold, unless, of course, the trust agreement provided otherwise, as, for example, upon majority vote of the shares placed in trust. As with voting trusts, a shareholder electing to participate in an ownership trust could freely decide what rights accompanying the stock go into the trust, so that no more control is surrendered than desired. Other shareholder rights could be protected, such as the right of inspection of corporate records and the ability to bring derivative suits.

The main distinction, of course, between the alternatives of voting and/or ownership trusts and the automatic stock restrictions in S. 2065 is that the individual shareholder's freedom of choice is preserved and the viability of the corporate structure is protected. Neither the Federal Government nor fellow shareholders are forcing the individual shareholder, against his will, to hold on to stock and thereby restrict his ability to realize economic benefit from it.

Yet the ability to fend off unwanted takeovers is still available. If a majority of Native shareholders would be willing to vote under section 4 of the bill in favor of restricting alienation, the same majority should be willing to place their shares in a voting trust for certain types of decisions or in an ownership trust. Doing so would remove the Native corporation as a target for those persons or corporations who would wrest control from the Natives. Indeed, the placement of a substantial, but non-majority, block of stock in a voting or ownership trust would have much the same result.

Insofar as there is fear that a Native shareholder will be defrauded if he is allowed to sell his shares, another avenue to be considered, especially as the 1991 deadline nears, is whether Native corporations should be subject to the shareholder protections and information requirements afforded by the Federal securities laws. In this way, important information concerning the economic condition and prospects of the corporation would be available to shareholders.

Because the provisions of the bill extending the restraints on alienation unduly take away the rights of individual Native shareholders and because there are better and effective alternatives to meet the stated concerns of the proponents of the legislation, we oppose the extension of such restraints. However, because of the above-mentioned differences between regional and village corporations, we are willing to limit our opposition to those provisions insofar as they apply to the stock of regional Native corporations. In these circumstances, the Administration will oppose the bill unless section 4 is amended to restrict its application to village corporations exclusively.

QUALIFIED TRANSFEREE ENTITIES

Section 5, concerning land and membership entities, could lead to attempts to establish independent Indian communities similar to the Indian country or reservation system of the lower 48 States. Efforts to exploit this provision through litigation would likely result. This clearly contravenes the intent of ANCSA as expressed in section 2(b). We recommend, instead, that an express provision against the establishment of such "Indian country", as defined in 18 U.S.C. section 1151, be substituted, along with an explicit statement that the United States does not bear the same trust responsibility for ANCSA settlement lands as it does for Indian lands. Without these recommended statements, the Administration would be compelled to oppose the bill. As we have stated, there are many valid social and cultural reasons for retaining strong Native identity, but the possible extension of new Native government jurisdiction to non-members and the assertion of new authority at the expense of State authority undermines the previous settlement effort and goes far beyond what is necessary for Natives to control their destiny.

TRANSFER OF SUBSURFACE ESTATES

Section 9 of the bill authorizes regional corporations to convey any subsurface estate to a village entity that owns the surface estate. We are very concerned about this provision and fail clearly to understand its purpose. Because of the section 7(i) revenue sharing provisions, this provision could adversely impact all regional corporations and therefore upset one of the delicate balances sought to be achieved by ANCSA.

If the village corporations desire this provision because they want to develop their subsurface resources, then perhaps they are more nearly economic institutions than we have believed them to be. In that case, we would be compelled to reexamine our acceptance for village corporations of the bill's provisions concerning issuance of stock to new Natives without consideration and extension of the restrictions against alienation.

If, on the other hand, the village corporations merely desire section 9 so as to provide them with the ability to prevent development of subsurface resources in a manner which unreasonably interferes with subsistence or other village cultural use of the surface of the land, then we suggest that the provision be redrafted to focus on accommodation of such use of the surface and development of the subsurface resources.

LAND BANK PROVISIONS

The tax exemption and other immunities provided in section 10 are too broad. They go beyond the basic goal of Alaskan land protection and could create unintended problems. For example, they could undermine the Alaska Land Bank program established in section 907 of the Alaska Lands Act. We recognize that this program has been much delayed. However, we have just completed our first agreement and believe that this program deserves additional time to develop. It can serve important conservation interests because of the requirement that any

Native lands entering the program be managed compatibly with any adjoining public lands. This benefit should not be abandoned. However, we believe that, so long as the management compatibility concept is maintained, there may be merit in providing for some extension of such tax and title protections. We would be happy to work with the Committee to draft language along these lines.

TREATMENT OF STOCK IN FEDERAL OR STATE PROGRAMS

It has been suggested that, if Native corporation stock becomes freely tradeable by 1991, a great many of the shareholders really will not benefit from such sales of shares as they might make because they will lose, or at least suffer from sharply reduced, Federal or State welfare payments. This is because many welfare laws have a "means test," and, if stock can be sold, the value of the stock will be regarded as an asset for means test purposes, with the result that the Native might not receive the welfare benefits he would have received if his stock had been subjected to restraint against alienation.

We have no objection to a provision which simply provided that, whether or not Native stock is freely tradeable, the value of the stock in the hands of its original owner (or in the hands of his or her relative who acquired the stock by gift or inheritance) and the proceeds from a sale thereof shall not be regarded as an asset of the shareholder for purposes of any means test under Federal or State welfare laws. However, we object to extending the reach of any such provision to include dividends or any other income received by the shareholder in respect of stock he continues to own. We believe that there properly is a distinction between preserving the asset value of the shares the shareholder received under the settlement act and the dividend income which he receives.

CONCLUSION

In conclusion, we continue to support the original settlement Act, but recognize that many issues must be worked out before the 1991 deadline. In so doing, we should make any necessary adjustments to the original Act to make this innovative settlement work as originally intended without creating any new problems.

With this in mind, Mr. Chairman, we are grateful to you and the Congress for leading the discussion on these issues, and we look forward to continuing our work with you, the State of Alaska and the Alaska Natives on this important issue.

That concludes my prepared remarks. I would be pleased to answer any questions you may have.

Senator MURKOWSKI. Thank you very much, Mr. Horn. I am sure Senator Stevens has several questions and I, as well have some. I am going to accommodate Senator Stevens' schedule because he has another hearing to attend.

But first of all let me tell you that we are pleased to have a full accounting of the position of the Department of the Interior which was not available in the House hearing. I think you would agree that the testimony in the House hearing indicated that the Department of the Interior had some difficulties with it but was still studying the problem. And I know you have been working on the problem for some time; I think you started last November. So this is somewhat of a red-letter day to know that the Department of the Interior now has identified the problems, and of course the purpose of this hearing is to relate to those problems.

I am going to ask that the young lady put this yellow sheet on the corner of the press table. The purpose specifically is to have everyone here from Alaska list how they can be reached while they are staying in Washington. We do not know what hotels you are staying at. So if you will be kind enough to put your name, your Washington hotel, and Alaska address, why it would be helpful to us. And the young lady will have them on the table.

Senator Stevens?

Senator STEVENS. Thank you very much. I am glad to see you here today, Bill, and I echo what Frank has said about the presentation of the Department of the Interior's views. I do not agree with them entirely, I am sure you realize. And I would hope we could do this. I would hope we could find a way to get a philosophical agreement about the problem or problems we are dealing with.

For instance, in 1971 when we tried to identify the entities that should manage the settlement should we be successful in achieving a settlement, we found there was no commonality really in the State and the Native entities. And for that reason since this was the first time Congress had ever settled Indian or Native claims by legislation, we devised the corporate approach requiring corporations for villages and establishing the 12 regional corporations to manage the land and the money which was the subject of the settlement.

Now as we did that, we created management patterns for those corporations. There was no experience in the past, they were quasi-State, quasi-Federal entities, but we set up internal management patterns. After 15 years the Native people who have been managing those corporations have come back to us and said the management structure is too rigid; it does not work, and we want to have some self-determination in terms of those management patterns.

Now would you say that philosophically Interior would agree that the management pattern, the concepts of management of each corporation, ought to be unique to the people who are the beneficiaries of the corporation and should not be any of the government's business as to how they really manage those corporations? Do you agree with that?

Mr. HORN. Yes. I think so, Senator. I think that where we have been coming from is that we see two driving forces: how do we set up a situation that facilitates and gives the corporations opportunities to hold on to their assets, to their land, and protect the control of their corporations.

Senator **Stevens**. Well, that is another matter. We can get to that subject. But the concept of internal management, so long as it does not impede upon Federal policy outside of this settlement, ought to be something uniquely for the corporation.

I do not see anything wrong with the Southeastern Alaska Corp. having one set of bylaws and articles of incorporation and the North Slope having an entirely different one and a different procedure. Do you?

Mr. **Horn**. None whatsoever.

Senator **Stevens**. I mean, had we recognized their tribal heritage, they would have had different cultural impacts on their tribes; right?

Mr. **Horn**. That is correct.

Senator **Stevens**. So to the extent that we are now looking at these amendments, if we can accommodate their desires for management concepts, we ought to do so so long as it did not impede either an established Federal policy or aggravate the problems that the State has with regard to the non-Native population intersecting with these Native corporations.

Would you agree with that?

Mr. **Horn**. Yes, sir. I think in our mind that is the policy of self-determination. We do not want to get involved in day-to-day operations.

Senator **Stevens**. All right. Well, now, let's look at one of them, and incidentally it is one where I do not necessarily agree with what they want to do, but we have the after-born issue. We determined that consistent with a traditional Federal approach after-borns would not share in the settlement.

Had there been a judgment of a court, the court would have prepared a judgment role and only those alive and eligible to participate would have shared in the judgment; the judgment would have been distributed equally and there would have been no management pattern. We established a management pattern primarily for the benefit of after-borns, I might add, even the 1971 provision to limit alienation to 1991 was based upon a desire to protect those who came after the current generations and require that that stock be preserved at least 20 years in Native ownership.

But be that as it may, they want the changes. I just want you to assume that you are the lawyer for my corporation. My wife and I formed a corporation when we were quite young and we issued 50 percent of the stock to each one of us. Now a little mom and pop corner grocery has become a competitor to Safeway. All right? But we still own 50 percent each. And we have been busy in many ways. We now have eight children. We come to you and say we want to share this stock with our children. And we decide that we will have the corporation issue new stock. OK? I will keep my 50 percent, my wife will keep 50 percent, but we will issue to each one of the eight children a same amount of stock so that there will be 10 equal shares.

Anything illegal about it?

Mr. Horn. No, as long as in the case you have got 100 percent of the shares voting to issue new shares and devalue what you have in your hands.

Senator Stevens. Well, in this circumstance it would take 50 percent because we are both equal. Suppose we had a third member in there and we each had 40 percent and someone had 20 and my wife agreed but the other person did not. And we say we are going to issue the kids new stock. If you do not like it, we will buy you out.

Mr. Horn. Well, that would be the standard remedy in standard corporate law, to buy out the minority partner. I think that that is our concern that if we authorize through law the issuance of new shares of stock—and that we very strongly support, we think that type of flexibility must be provided to the corporations—what we oppose however, particularly for the regional corporations, would be the authorization to issue new shares without consideration.

Senator Stevens. Well, that is what I am getting to. You say that I would have to charge my kids for the stock. You say they have to charge their children for the stock. By definition they have no money; we know that. Now why should the Federal Government impose upon these corporations a policy of consideration for that extra stock. The problem is protecting the rights of the nonfamily members who might dissent, is it not?

Mr. Horn. That is correct.

Senator Stevens. It is not your problem that says you have got to issue the stock for money.

Mr. Horn. No. Our concern basically relates to the diminution of the value of the stock held by a minority shareholder who does not want to go along with the issuance of new classes of stock to the kids for——

Senator Stevens. The Secretary of the Interior is the trustee of whatever relationship there is there in trust of these Native people who might be dissenters. When those who are not dissenters are the beneficiaries of the after-born policy, why should the Federal Government enter its opinion? You have here a situation that says "we do not approve of issuing any stock to these after-borns unless it is for consideration."

Mr. Horn. I would interpose that what we have provided is we have discussed new shares of stock for consideration or to authorize gifts to the children from existing shareholders so that we can get into that.

Senator Stevens. All right. But that means there are two different things. You are still putting the Federal Government in the internal management of that corporation and saying you cannot do this unless you do it this way or that way.

I take the position that you ought to back off and ask where the Federal responsibility is? It is only in protecting the dissenter. It is not in protecting the shareholders that wish to consent to the decision.

Mr. Horn. Well, that would be no problem. If the law carried with it an appropriate protection so that the rights of the minority shareholder were not unduly diminished in this particular case, that is something we could go along with.

Our primary concern is if you authorize some substantial diminution of the shareholder's rights through Federal law, that somehow that minority shareholder may have a liability claim against us because by act of Congress we diminish the value of his stock and therefore, Uncle Sam, you have to pay up to make me whole. That is what our concern is driven by.

If that shareholder can be appropriately compensated or have his rights appropriately protected, we would have no qualms or reservations.

Senator STEVENS. All right. But you did not say that. That is my point. I would like to get a commitment that this meeting that you are going to have between the Native leaders and the Secretary is preceded by a meeting of the lawyers from your staff, from the congressional delegation staff, the AFN, the regional corporations, and the State, and I believe we should include the environmental coalition—they are here this morning to testify. I hope we can get an understanding on the areas in which there is a legitimate Federal interest because of an existing Federal policy that would be contravened by a suggestion in this bill.

I suggest to you there is very little in this bill that contravenes any existing Federal policy, that a lot of your people are saying if we had had a chance to do this in 1971, this is the way we would have done it. Having lived through 1971—I want you to know there were a lot of people on that conference committee that had their own ideas, and they left their imprint. But as a practical matter now, we have a different circumstance. We have people who have lived with these corporations for 15 years and their understanding of what is needed for the corporate structure in their area ought to be determinative, unless there is an existing Federal policy to contravene.

A lot of people argue about us lawyers all the time, but in the final analysis we are the ones on one side or the other that are going to draw up the objections or protests against what is in this bill. And as I see it, this bill is almost assuredly going to have to be in the consent calendar to pass, which means it has got to be a substantial consensus from the people that know it best.

I urge you to get that preliminary meeting together and do it prior to the time the policy decisions are made through the leaders of the AFN and the regional corporations and the Native representatives and the Secretary.

Now is that possible?

Mr. HORN. I will take a stab at it and everybody's schedules; if they are flexible and willing, we will try.

Senator STEVENS. Well, I look around and there is a lot of high-powered people out there. There is a lot of money on that side of the table, and we ought to get some action out of them while they are here. I think they are ready to sit down and do that.

But if we strip down this bill so it is a basic bill to change these corporations so they meet the goal of the beneficiaries of the settlement and as long as it does not either intersect Federal policy or take away from the State of Alaska, I think we should accommodate them in terms of the desire.

Now there are some Federal policies that would be in contravention of some of the things they want to do. For instance, the rights of the dissenters. Clearly, that is a Federal issue because you do have a relationship to the dissenters because I believe in this instance they are by definition Native people that the Department of the Interior has an obligation to.

Let me lastly congratulate you for the decision to add the addendum to your statement. I think the one thing that has bothered us all is the problem of the sale of the stock and the fact that it would merely be a substitute for Federal or State supportive programs for people in the area in which many of these people reside, and it would be wasted.

I particularly think of the problems that many of them have in sending their kids to school and such. There would be no reason to force that money to be spent to make up for the loss of Federal or State assistance in any way. And I hope that that can be incorporated in this bill.

And my final question is: Did you check that with OMB?

Mr. HORN. As far as I know, OMB cleared this statement.

Senator STEVENS. Did Treasury clear it?

Mr. HORN. What happens in the workings of the new executive office building are sometime even a mystery to me. So I presume I am here with an administration cleared position.

Senator STEVENS. But you realize that that means that the substitute of cash for stock is a nontaxable transaction? That is what you said; that is what I heard you say. Is that right?

Mr. HORN. As far as I know, that is what we are saying.

Senator STEVENS. That the income from that cash would not be protected is what I heard.

Mr. HORN. Well, I think that what we are trying to do is to differentiate between the asset value that you retain. That would not count. But if you start getting dividend income, the dividend income would count.

Senator STEVENS. Yes; that is what I read. That is a very good solution, and I commend you for it. I hope that the Treasury has signed off. It will be very important in the future management of those corporations, I think. That would apply to the sale of less than all of the stock, too. Any percentage of the stock that is sold by a current shareholder, the amount received would be treated according to that; is that right? That applies to the total sale?

Mr. HORN. Let me be candid. This is a policy concept that we have promoted. We have not generated specific statutory language. That is something we would like to work obviously with you all in the Native leadership to put together to see if we can make it. But this was the policy idea that we wanted to float during this hearing and see what type of reception it could get.

Senator STEVENS. Well, it is the kind of attitude I am talking about in terms of the overall bill because that is a very, very farsighted attitude, and it will facilitate the management problems and the problem of allowing some of these people to get something out of a portion of their stock and still remain as stockholders.

It is a very interesting proposal. I think that the corporate leadership here may want to reflect on that, too, before they comment on it. But I am hopeful that you can arrange a meeting that I contemplate.

Mr. Chairman, I pledge to you that the legal advisors I have on my staff, of whom Greg Chapados is No. 1, who have worked on this legislation are available any time during this week to try and see what we can do to see if we can eliminate some of the ghosts that some people see in this legislation. I think it is highly important that we get this done substantially in advance of 1991 because there are meetings of these regional corporations that have to take place. They have to comply with State laws.

If they change their articles, it is going to take a substantial period of time in the period preceding 1991 for these people to make the changes that are authorized, if they decide to make them. Many of them may decide not to make them at all. There may have to be some litigation pursued by some of those who are dissenters. All of that must take place before 1991.

The last time I was home someone said, "what the hell is the hurry, Stevens? Why are you pushing this bill?" Well, if we come right up against the wall and this legislation passes in 1990, and 1991 is on us, how can you protect the rights of the dissenters? How can you have access to the courts? How can you have access to corporate meetings? And some of these areas are larger than 5 or 6 States in the southern 48.

And these corporate leaders have to go from village to village to village to hold meetings and explain these things and maybe go back two or three times to get an understanding of what proposals they are going to pursue pursuant to these changes, because we do not mandate any changes in this bill; we only authorize changes.

I think unless this bill gets through this year, we will be sitting here 2 years from now. It will take at least 18 months to get it through next time. And that is unfair to the people who have the job of going out and pursuing corporate democracy in the Native villages and the Native areas of our State. I think we must get this bill passed this year, if it is at all possible. And those people who oppose it—and I see some that do and some that are misrepresenting this bill—I hope they, too, will come and look at these issues and understand what is in the bill instead of reading ghosts that they think are harbored in this bill.

I firmly believe, Mr. Chairman, if it is at all possible, we should get this done this year. Now it may be that there will be a hiatus and we cannot make it. We have only got 6 weeks left, but if it is humanly possible I think we should pursue it, and I believe it will be possible if we are all of good will as we pursue this.

I thank you, Mr. Chairman.

Thank you, Bill.

Senator MURKOWSKI. Thank you very much, Senator Stevens.

Mr. Horn, let us go back a little bit in reference to the timeframe that you have been working under. Legislation was introduced in February. I think our initial contacts with Interior were in November. You have heard the expression from Senator Stevens with regard to the appropriateness of moving the legislation.

We have had, I think at both Anchorage and Fairbanks, testimony by Interior witnesses. The House hearing did not address the concerns that you have expressed here today. I think that has already been acknowledged. Within the timeframe that we have I think all parties have worked diligently and responsively to try and address the various concerns. They have been represented by this, the 12th hearing having been held.

But reality dictates that we are going to be on recess August 15 until September 6. So that gives us roughly September 8 through October 4 which is the time that we are due to be in to address primarily the concerns of the Interior.

The other concerns have been expounded if you will through suggested corrective legislation, either by myself, Senator Stevens, or perhaps in further testimony to come. But there is a lot of effort, time, and commitment that has gone into the process up to now, and I think it fair to say that you are not surprised that we have had such a difficult time getting a position from the Interior.

My question to you, sir, is if we continue to pursue this in a diligent manner and recognizing the fact that it has taken Interior almost 1 year to get to this point, is it realistic to expect that we can get the Interior's concerns resolved within the timeframe remaining, particularly those areas where there is concern over the standpoint of liability to the Department of the Interior.

And we are down to a situation, Mr. Horn, where we either address it with the collective wisdom and capabilities for those people involved in a diligent timeframe or we cannot possibly get it done now. Where are we?

Mr. Horn. Well, Mr. Chairman, I think in looking at the six particular areas we outlined, there are a couple of them that involve very fundamental policy issues, and obviously those are the types of things where Congress, in consultation with the Secretary, has to reach some conclusion. And that really would involve the concept of the automatic alienation restraints extended to the regional corporations and the concept of establishing Native stock and how that relates to the section 2(b) policy.

The other items I see more or less falling in a different area where I think there appears to be, or may be some policy agreement that what we are talking about is what is an appropriate means to reach an agreed-to end. On the qualified transferee entities, I think the concern that has been expressed to us that here in your opening statement is that what we do not want to do is give rise to the successful assertion of sovereignty claims, that no one is opposed to the concept of transferring land to these entities; it is just not to create this other problem off to the side. That in my mind is something I think we could work out very quickly.

On the concept of issuing shares of stock to new Natives, I think we have agreement that the corporations need to have authority to issue new stock. I cannot imagine that there is any disagreement over authorizing the giving of stock in interfamily gifts. I think that that would go a long way. The fundamental question we have there involves the impact on the rights of the minority shareholder who might see his shares devalued. And even there, our concern is primarily focused on the regional corporations because of their greater economic thrust and focus. I think that is one that can be worked out.

Land Bank I see almost totally as a drafting question because in all of our conversations I have not seen or heard too much great controversy over the general policy. And in terms of authorizing the transfer of subsurface estates, if the purpose of that provision is to essentially give the village corporation some measure of protection over what happens on the surface, that again I think is a drafting question.

So with the exception of the regional corporation alienation restraint and the Native stock, which I see as real fundamental policy issues, the others ones I think are very, very amenable to some hard and fast bargaining among the parties to come up with an agreement.

Senator MURKOWSKI. Well, I would like to say that from the standpoint of working the process through the hearings, it seems to me that we are at a point where we can address the concerns expressed by the witnesses through the hearing process through corrective legislative intent language or substantial changes.

You know what the timeframe is, and the question is, can Interior do that as well, because you have just given your menu, so to speak, of concerns. And if this thing is not going to go this year, somebody is going to be the fall guy. And I do not know whether I am looking at him or the Department, but I just want to make sure we exercise this because the train left the station some time ago, and Interior was not on.

Mr. HORN. I am wearing my Departmental hat, so I guess in that sense if things all fall apart and we are one of the culprits, well, so be it. And I will say we have been working on this since early 1985.

Senator MURKOWSKI. Well, that is what concerns me. There has been work, but we have just gotten the problem identified now and we are talking about trying to resolve it in a period of a couple of months. And Senator Stevens and I are in agreement that we will try and expedite it within the responsible nature of what we are doing, if indeed we can have the commitment from Interior that they will deploy their assets appropriately.

There have been a lot of meetings. There have been a lot of concerns. But there has not been a lot of resolve, and I am sure that nobody wants to waste their time on an effort that is not genuinely going to be received in the sense of trying to accomplish it if we can address the concerns and get a consensus of Alaskans.

Mr. HORN. I think that in my opinion three or four of the issues could be resolved through some just hard bargaining at less than a principal level. I think that for two or three of the issues, it is going to take decisions and discussions by the principals because they involved fundamental policy questions. But I think that we could come to resolution in sufficient time to permit Congress to act when it returns from the August recess.

Senator MURKOWSKI. Well, I appreciate that reassurance, Mr. Horn.

You indicate that the automatic Land Bank protection is something that you do not necessarily feel is perhaps vital to the legislation. And I think if we reflect back, there has been one Land Bank set up in 6 years which does not necessarily support that the Interior has had a great deal of experience or been able to expedite the process. That is the concern of many of the witnesses who indicated the necessity of having some kind of an automatic Land Bank capability, not that you have not got it, but that it is just something that is very, very foreign evidently to the Interior.

What is your objection to the automatic Land Bank?

Mr. HORN. Well, we have no objection, per se. What we would like to do is basically do a little bit of fine tuning on section 10. We think that the terms such as development, what does that mean; compatibility, what does that mean; who is the adjacent landowner that you work with? Those are all of the issues that have been the crux of all the negotiations that have occurred. And they have proven to be very difficult to deal with.

If we could get those terms resolved in the statute and we had some provision for recording when lands were put in the Land Bank so that creditors could be put on notice that these lands were subject to these restraints and immunities, I think we are in a full position to support an automatic Land Bank. But it has just got to be a little more carefully, more precisely done to avoid the problems that have plagued the section 907 Program.

Senator MURKOWSKI. Now the potential liability of the Federal Government, if they extend the stock restrictions, is a concern. And this is, I guess, something that you are going to hang pretty tight with because of the Fifth Amendment.

Now the question is: Is this something in your opinion, on which there can be no compromise? It is either Interior's way or not at all?

Mr. HORN. Well, I think that as to the Department, a lot of it has to do with what is an appropriate policy and what are the appropriate objectives.

Senator MURKOWSKI. Yes, but we have also the Fifth Amendment to concern ourselves with. And you are either going to concern yourself with it or you are not. I am curious to know whether you are or are not.

Mr. HORN. We think that the constitutional questions are resolvable. Obviously, if we thought they were not resolvable, we could not support the automatic extension of alienation restraints for village corporations and the impact that would have on village corporations shareholders. So I think we, at least, the Department of the Interior, has crossed that hurdle at this stage of the game.

Senator MURKOWSKI. Well my question, though, is, Are you going to have to go back to the Department of Justice for a legal opinion on the liability of extending stock restraints? And if so, goodness sakes, we know that it is going to take more than 2 months.

Mr. HORN. Well, we have asked Justice, and Justice is working on that now. They have not come back with an advisory to us.

Senator MURKOWSKI. Do you feel that has to be done before this legislation can move forward?

Mr. HORN. I think it is something, in terms of Administration clearance on any final measure, that they—OMB and the White House, and the Secretary—are going to want some idea of what are the liability consequences of the legislation. In our minds——

Senator MURKOWSKI. When we introduced this legislation in February, we asked this question. We still do not have an answer.

Mr. HORN. We asked the question at the same time, and the lawyers that the Senator referred to are still laboring away.

I will say that I think that within the Department we have come to the conclusion that the taking questions are fully resolvable; otherwise, we would not have been in a position to recommend—or at least be in a position that we can accept—the automatic extension of alienation restraints for village corporations, because if we thought that that guaranteed a successful taking claim against the Federal Government, we would not have been able to support that type of an approach.

So we crossed that hurdle in our mind legally. I think what we are looking at are: What are the policy implications? And, of course, what are the different objectives of village versus regional corporations?

Senator MURKOWSKI. Well, I certainly understand those concerns. But my question is, if we get down to a period of a few weeks remaining in the session and we still do not have an opinion from the Department of Justice on the question of extending stock restriction, then it is not going to go anywhere because you are going to have to have that.

Mr. HORN. Understood. And that is something that we have been in touch with them about, telling them that the train is starting to leave the station and if we want to be on board, we need an opinion post-haste.

Senator MURKOWSKI. I hope the train we are talking about is not the White Pass Yukon because it does not run anymore.

I think it would be very helpful, Mr. Horn, if you and your colleagues would give us a must-list of specific action that has to be initiated prior to the development of language that would address your specific concerns. And obviously one that does come to mind is the opinion from the Department of Justice and whatever others so we can begin to realistically identify and check off where we are.

Mr. HORN. We would be pleased to get that to you.

Senator MURKOWSKI. In your testimony you indicated that you felt that there was a distinction between the stock of the village corporations vis-a-vis the regional corporations with regard to the liability of the Federal Government being extended to one in a different manner than it would be extended to another on stock restriction.

Would you explain what is the specific distinction with regard to the liability of one over the other?

Mr. HORN. I think what it is is that, first of all, the primary reason for the difference is one of policy and what we perceive to be the different objectives of the different corporations, that the regional corporations are largely operating in the economic realm. Many of them, of course, are largely restricted to holding the subsurface estate, and many of their shareholders have legitimate economic expectations that they can expect to derive now and in the future from the successful management of these corporations.

Hence, when it comes to taking actions that would diminish the rights of the shareholders, particularly diminish their economic rights, I think because of these economic expectations, we had to tread very carefully in dealing with the taking question on the regional corporations.

Whereas—and of course these are all generalizations; we can all find exceptions—by and large, many of the village corporations are not operating in the real corporate world, and indeed they are acting more in many respects as social and cultural institutions holding on to land that often is being used for traditional purposes.

Therefore, the economic expectations attendant to owning village corporation stock in our mind basically are significantly less than——

Senator MURKOWSKI. Well, I find that a little bewildering because we are basically dealing with corporate stock, and the stock restrictions and requirements, and the corporate filings and the corporate principles are the same. And whether they are adhering to them or not is a situation that may or may not exist.

But I fail to grasp that there is a difference from the standpoint of liability on the restrictiveness of that stock.

Mr. HORN. Well, one of the key tests that the courts have established in terms of any takings test is different economic expectations of the parties. And I think that the economic expectations attendant to owning regional corporations stock are significantly greater generally than the economic expectations attendant to owning village corporate stock.

Basically, however, the distinction in our treatment, our proposed treatment, between regional corporations and village corporations, is rooted in policy concerns as opposed to being rooted in legal concerns.

Senator MURKOWSKI. I would trust that your counsel will address whatever the corporate concerns may be from the standpoint of your argument. And I think it does follow that there is a distinct difference from the standpoint of the corporations and how they function and the social requirements of the villages vis-a-vis the business orientation of the corporations.

But I am concerned that there is still a corporate principle involved in either issue. And whether you can have a differentiation or not I think would vary with certainly the support of having an opinion on it, at any rate.

One other area was the voting trust. Obviously they are complicated to administer. Would it not be difficult to go through the whole process of educating the shareholders in that concept? Would it not lead to extended litigation? What is the advantage of addressing or initiating or introducing a complicated formula of voting trust?

Mr. HORN. Well, I think what we are looking for is how do we go about achieving the objective of permitting these corporations to hold on to control and fend off the hostile takeover. Now obviously one of the avenues available is that laid out in the measure—have Congress, by Federal fiat, automatically extend the alienation restraints so no one can come in and take over the corporation.

We are concerned, of course, that that generates the adverse policy spinoffs in terms of the diminution of shareholder rights, plus in our mind that is likely to trigger some extensive constitutional litigation in related issues.

In order to avoid this sort of coercive action by the Federal Government in dictating that stock alienation restraints shall be extended, and at the same time to give the corporations an opportunity to maintain control, we have looked for alternative measures, and the voting trust is one of those.

We think that if the corporate leadership could persuade its shareholders to vote for extended alienation restraints or take other similar actions, they could properly and similarly educate their shareholders to basically commit their stock to voting trusts or, in the alternative, to the ownership——

Senator MURKOWSKI. Why do you not make it an option rather than mandate it?

Mr. HORN. Well, it is an option. We would not mandate.

Senator MURKOWSKI. It is an option? OK.

Mr. HORN. Yes; it would just be an option, one of three or four options that we would offer up: The right of first refusal, which is in existing law; the voting trust, amended to make it more attractive than it presently is under Alaska law; the ownership trust, which is not presently available under Alaska law; and then, obviously, any of the other corporate control mechanisms or corporate protection mechanisms that are already available to the corporations by virtue of Alaska statutes.

Those would be the panoply of options available to any of the regional corporations and they could select the one they want.

Senator MURKOWSKI. Is it fair to say if you could summarize the concerns of the Department of the Interior that it would appropriately be in the area of liability to the Government from the standpoint of a minority shareholder that would bring action against the Federal Government for not protecting his or her rights?

Mr. HORN. I think it is that, and also it is the policy of now 15 years afterwards making a radical change in the rules, particularly for the holders of regional corporation stock who I think have, or we think have, some legitimate economic expectations that we do not think should be so radically impaired by an act of Congress.

Senator MURKOWSKI. Senator Stevens went into it briefly, but I just cannot understand what the concern of the Department of the Interior is if a regional corporation wants to dilute its stock by unanimous consent.

Mr. HORN. If it can do it unanimously, there is no problem.

Senator MURKOWSKI. Well, if there is not, then obviously you have liability. And you do not want to be placed in that position. That is your position, right?

Mr. HORN. We think we could cure the liability problems through appropriate drafting. But that still would not address a fundamental policy problem, which is we just are not persuaded that it is appropriate to step in and cut off legitimate economic expectations 15 years after a settlement. I think it is a policy-driven concern more than it is a legally driven concern.

Senator MURKOWSKI. Well, in the case of taking care of those born after 1971, you are not cutting off any economic viability that they would have had; you are simply giving those people that hold the stock the right of choice to dilute their holdings and make it available to others that are recipients through the Native blood ownership.

Mr. HORN. No problem with that as long as that portion of the shareholders who do not want to go along with the dilution are treated appropriately and do not have their rights unduly diminished. I think if that latter aspect were properly taken care of, we would be OK.

Senator MURKOWSKI. That is what I assume would have to be the case. Otherwise, the liability would be such that the Federal Government would not basically support that authority, and that is what you are saying.

Mr. HORN. Yes.

Senator MURKOWSKI. OK. I think we have pretty well exercised some of the points that you have brought up. And I thank you for bringing to a head the Department of the Interior's position. I hope that you can drop by our reception from 5 to 6—hopefully the hearing will be over by then—because I am sure some of the Alaskans would like to question you personally. And of course this hearing process does not provide that climate.

Mr. HORN. I will try to be there. They all know who I am, anyway.

Senator MURKOWSKI. But thank you very much. We wish you a good day.

We are not exactly moving right along, but we are moving. We are going to have a group which I will call panel three for the sake of keeping explanations brief.

The Director of the Alaska office, State-Federal relations, and special counsel to our Governor, Mr. John Katz, who will join Mr. Emil Notti, commissioner of the Alaska Department of Community and Regional Affairs; and Ms. Janie Leask, president of the Alaska Federation of Natives, who will be accompanied by Mr. John Shively, consultant for the Alaska Federation of Natives.

I recognize that some of you are here to testify on other legislation pending, and we will do the best we can.

I trust that the testimony of Mr. Horn has shed some light on your individual testimony. I again would remind you that I will maintain a 5-minute rule, and will ask at 5 minutes that you summarize your testimony.

Mr. Katz, I believe you are the first one up. I am happy to see you here before us. It is nice to see you this morning, and I look forward to your testimony.

Please proceed, John.

Mr. KATZ. Mr. Chairman, Mr. Notti will be testifying on behalf of the State.

Senator MURKOWSKI. Well, that gives you a little more time. Please proceed, Mr. Notti.

STATEMENT OF EMIL NOTTI, COMMISSIONER, ALASKA DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS, ACCOMPANIED BY JOHN KATZ, DIRECTOR, STATE/FEDERAL RELATIONS AND SPECIAL COUNSEL TO THE GOVERNOR

Mr. NOTTI. Thank you, Mr. Chairman.

My name is Emil Notti. I am commissioner of the Alaska Department of Community and Regional Affairs. Of course you know John Katz who is the director of State/Federal relations and special counsel to the Governor.

We appreciate this opportunity to testify on behalf of the Sheffield administration on the important legislation which you are now considering.

The Alaska Native Claims Settlement Act, which would be amended by S. 2065, marked a major change in the Federal Government's treatment of Native Americans. Reacting to the experience of the past, the Congress added a new chapter to Federal Indian policy which had failed in the continental United States to foster the well-being of Indians in the general society or to protect the Indian pride and heritage within their own culture.

While Federal objectives in enacting the Settlement Act were laudable, the act has yet to achieve the high standards and purposes envisioned by its drafters. Implementation has been slowed by litigation, initial bureaucratic recalcitrance, the necessity to establish viable corporations and to train corporate managers, and the unforeseen complexities of managing and conveying land to individuals and to village and regional corporations. Native corporations have not received assets in a uniform or timely fashion. Further, the benefits accruing to individual shareholders have been less than originally expected.

Alaska's Native people have now had time to consider the known and probable effects of the Settlement Act and to come to conclusions about what is best for them in the future. These conclusions and recommendations are reflected in the bill before you.

The proposed amendments represent changes in Federal law. As such, their disposition is the product of Federal decisionmaking. We recognize that there is a special relationship between Alaska Natives and the Federal Government that can only be clarified and codified in Federal law.

Nevertheless, the State of Alaska desires to participate in this process by providing testimony on matters which affect the State's rights under the Statehood Act or which might impinge on the obligation of the State to provide certain services to all citizens. In addition, where appropriate we will advocate the special rights and needs of Alaska Natives.

The Sheffield administration stands with the Alaska congressional delegation in supporting the intent and purpose of the 1991 amendments.

Some of these amendments have been necessitated by significant delays in ANCSA implementation, as we mentioned earlier. Even more important, the Native people in accordance with the self-determination principles embodied in the Settlement Act have come to certain conclusions about the management, ownership, and operation of their corporations.

In our opinion, these decisions should be respected unless they are in clear conflict with established State or Federal policies. We find no such conflicts in the amendments before you.

There are a number of issues that have been specified before. They are in my written testimony. I will just say that the State supports these amendments because they have been arrived at by the corporations over several years, and we see no conflicts there.

It is important to distinguish amendments to the Settlement Act, the so-called 1991 issues, from unrelated matters which are also of much interest to Alaskans at this time. Included in this latter category are subsistence hunting and fishing, Native sovereignty, and others. While some persons have sought to group all of these issues together, they raise markedly different legal and policy considerations.

My remarks today have dealt with proposed amendments to the Settlement Act and not with these other matters which are not now pending before the subcommittee. We do not perceive the 1991 amendments as sovereignty legislation. By our definition, Native sovereignty involves questions of governmental power and the extent of such power.

In our opinion, the 1991 amendments do not expand, diminish, or otherwise affect the body of Indian law from which Native sovereignty is derived. To ensure the correctness of this understanding, a specific provision has been included in the current legislation. This subsection is designed to maintain the status quo, whatever that may be, with respect to the sovereignty issue.

Mr. Chairman, Governor Sheffield believes in the strength and unity of the Alaskan people both Native and non-Native. He would not and could not support the objectives of legislation which would create conflict and acrimony. However, his desire to ensure fair treatment for all Alaskans and the maintenance of a strong and independent citizenry is not thwarted by the options given to Native people in Senate bill 2065.

Unity and strength are not jeopardized by self-determination and some diversity. The original Settlement Act sought to give Alaska Natives the option of protecting their traditional culture and/or following economic and other pursuits more characteristic of life in other places. In our judgment, the amendments pending before you are designed to perpetuate these options. That is why the Sheffield administration supports their objectives.

Thank you for this opportunity to present the views of the State on these important matters. Mr. Katz and I would be pleased to answer any questions which you might have.

[The prepared statement of Mr. Notti follows:]

TESTIMONY OF EMIL NOTTI
COMMISSIONER OF THE ALASKA DEPARTMENT
OF COMMUNITY AND REGIONAL AFFAIRS
SENATE SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION
AUGUST 4, 1986

Mr. Chairman and Members of the Subcommittee:

My name is Emil Notti. I am Commissioner of the Alaska Department of Community and Regional Affairs. With me today is John Katz, Director of State/Federal Relations and Special Counsel to the Governor. We appreciate this opportunity to testify in behalf of the Sheffield Administration on the important legislation which you are now considering.

The Alaska Native Claims Settlement Act (ANCSA), which would be amended by S.2065, marked a major change in the Federal government's treatment of Native Americans. Reacting to the experience of the past, the Congress added a new chapter to Federal Indian policy which had failed in the continental United States (U.S.) to foster the well-being of Indians in the general society or to protect Indian pride and heritage within their own culture.

The Congress chose a different approach in settling the aboriginal land claims of Alaska's Native people. This approach included monetary compensation of almost a billion dollars, the grant of 44 million acres of land, and the establishment of Native controlled, State-chartered corporations to manage these assets.

While Federal objectives in enacting the Settlement Act are laudable, the Act has yet to achieve the high standards and purposes envisioned by its drafters. Implementation has been slowed by litigation, initial bureaucratic recalcitrance, the necessity to establish viable corporations and to train corporate managers, and the unforeseen complexities of managing and conveying land to individuals and to village and regional corporations. Native corporations have not received assets in a uniform or timely fashion. Further, the benefits accruing to individual shareholders have been less than originally expected.

Alaska's Native people have now had time to consider the known and probable effects of ANCSA implementation, and to come to conclusions about what is best for them in the future. These conclusions and recommendations are reflected in the bill before you.

The proposed amendments represent changes in Federal law. As such, their disposition is the product of Federal decision making. We recognize that there is a special relationship between Alaska Natives and the Federal government that can only be clarified and codified in Federal law. Nevertheless, the State of Alaska desires to participate in this process by providing testimony on matters which affect the state's rights under the Statehood Act or which might impinge on the obligation of the state to provide certain services to all citizens. In addition, where appropriate, we will advocate the special rights and needs of Alaska Natives.

The Sheffield Administration stands with the Alaska Congressional delegation in supporting the intent and purpose of the 1991 amendments.

Some of these amendments have been necessitated by significant delays in ANCSA implementation, as we mentioned earlier. Even more important, the Native people, in accordance with the self-determination principles embodied in the Settlement Act, have come to certain conclusions about the management, ownership, and operation of their corporations. In our opinion, these decisions should be respected unless they are in clear conflict with established state or Federal policies. We find no such conflicts in the amendments pending before you.

Included in the category of amendments which reflect the exercise of self-determination respecting matters of principal concern to the Native community are the following. The original Settlement Act created a closed class of then-living Natives qualified to participate. A majority of Alaska Natives feels that this approach is inequitable and therefore recommends that benefits be provided to Natives born after 1971. Another amendment would continue the restrictions on stock alienation unless the shareholders vote to remove them. This recommendation reflects a legitimate desire by many Native corporations, at their discretion, to maintain the common objectives of their shareholders.

The corporate decisions which would be authorized by the 1991 amendments deal with fundamental questions affecting the corporations and shareholders involved. Accordingly, the proper protection of minority and dissenting shareholders is essential. After months of discussion, the Native community has come to basic agreement about how these protections should be provided. It is our understanding that this agreement is now reflected in the legislation before you.

Another series of amendments would maintain certain immunities from civil process and from taxation. The purpose of the original tax exemption on undeveloped Native land was to provide a period during which Native Corporations could develop the cash flow necessary to pay taxes. This objective has been thwarted by many factors beyond Native control which have impacted adversely on corporate cash reserves.

In addition, many Native people desire the option of preserving their land in an undeveloped state, considering it the foundation of Native culture. The amendments would allow Native people to protect their land base by extending the immunities from civil process and property taxes. We have no problem with these amendments, so long as the land involved remains undeveloped.

Essentially, the continuation of the land-related immunities currently provided in Federal law gives Natives people the option to protect their traditional culture or to use their land for economic development. In our opinion, the preservation of this right of choice is completely consonant with the original purposes of ANCSA.

It is important to distinguish amendments to the Settlement Act -- the so-called "1991" issues -- from unrelated matters which are also of much interest to Alaskans at this time. Included in this latter category are subsistence hunting and fishing, Native sovereignty, and others. While some persons have sought to group all of these issues together, they raise markedly different legal and policy considerations. My remarks today have dealt with proposed amendments to the Settlement Act and not with these other matters, which are not now pending before the Subcommittee.

We do not perceive the 1991 amendments as sovereignty legislation. By our definition, Native sovereignty involves questions of governmental power and the extent of such power. In our opinion, these 1991 amendments do not expand, diminish, or otherwise affect the body of Indian law from which Native sovereignty is derived. To ensure the correctness of this understanding, a specific provision has been included in the current legislation. This subsection is designed to maintain the status quo, whatever that may be, with respect to the sovereignty issue.

I should say that the conclusions reached by both the state and Native community about the effects of ANCSA differ markedly from those of the Reagan Administration. The Administration has recommended the significant curtailment of Federal funding through the Bureau of Indian Affairs for Alaska Natives on the grounds that the benefits provided by the Settlement Act make such allocations unnecessary. As mentioned previously, this conclusion is simply not borne out by the facts. Moreover, the Administration's decision was made without the benefit of the long overdue study mandated by Congress in the original Settlement Act for the explicit purpose of assessing ANCSA impacts.

Mr. Chairman, Governor Sheffield believes in the strength and unity of the Alaskan people, both Natives and non-Natives. He would not and could not support the objectives of legislation which would create conflict and acrimony. However, his desire to ensure fair treatment for all Alaskans and the maintenance of a strong and independent citizenry is not thwarted by the options given to Native people in S.2065.

Unity and strength are not jeopardized by self-determination and some diversity. The original Settlement Act sought to give Alaska Natives the option of protecting their traditional culture and/or following economic and other pursuits more characteristic of life in other places. In our judgment, the amendments pending before you are designed to perpetuate these options. This is why the Sheffield Administration supports their laudable objectives.

Thank you for this opportunity to present our views on these important matters. Mr. Katz and I would be pleased to answer any questions which you might have.

Senator **Murkowski**. Thank you very much, Commissioner Notti.

Our next witness on the panel is Ms. Janie Leask. It is always a pleasure to welcome you to our committee, and to Washington. We look forward to your testimony. Please proceed.

STATEMENT OF JANIE LEASK, PRESIDENT, ALASKA FEDERATION OF NATIVES, ACCOMPANIED BY JOHN SHIVELY, CONSULTANT, ALASKA FEDERATION OF NATIVES

Ms. **Leask**. For the record, my name is Janie Leask and I am president of the Alaska Federation of Natives, and on behalf of AFN I would like to express our appreciation to be here today to testify. I have submitted written testimony, which I would request be printed in the hearing record.

Senator **Murkowski**. It will be entered into the record.

Ms. **Leask**. Thank you.

Mr. Chairman, S. 2065 and H.R. 4162 represent almost 4 years of effort by AFN and the Congress to develop a package of amendments to the Alaska Native Claims Settlement Act, ANCSA, which will enable the act to be implemented in a manner that conforms to the real economic and social needs of Alaska's Native people.

In that regard, Mr. Chairman, I would like to express our heartfelt appreciation for the time and effort that you and Senator Stevens have expended on this legislation. In addition to this hearing, as you had mentioned earlier, the subcommittee has held hearings on S. 2065 in Anchorage, Fairbanks, and Bethel, and workshops have been conducted in Hoonah, Juneau, Sitka, Ketchikan, Kotzebue, and Barrow.

For that reason, the letter that the Alaska Republican gubernatorial candidates recently delivered to the subcommittee is as puzzling as it is disappointing. The letter requests the Senate to delay action on the 1991 legislation for at least 1 year because, as the letter states, "Alaskans have not been granted adequate time in which to discuss and fully understand the far-reaching consequences of these amendments."

In fact, as every signatory is or should be aware, this subcommittee has gone to considerable effort to provide all Alaskans an opportunity to express their views on the legislation. Consequently, their 11th hour attempt to play politics with our future is a profound disappointment to us.

With respect to the bill S. 2065, at the time it was introduced the text of the bill was substantially similar to the text of H.R. 4162. However, during the course of the legislative process in the House of Representatives, AFN, the State of Alaska, and other interested parties had an opportunity to do considerable additional work on the bill.

In significant measure, that work is reflected in the version of H.R. 4162 which passed the House, and which has been referred to this subcommittee for consideration in the Senate. For that reason, I would hope that the recently passed House bill, rather than the Senate 2065 bill, will be adopted by the subcommittee as the markup vehicle for reporting the 1991 amendments to the Senate.

The major differences between the two bills are identified in my written testimony, as well as AFN's recommendations for additional changes which we hope can be made to the bill before it is reported to the Senate.

We recognize that there are major policy differences between AFN and the Department of the Interior. We have been willing to work with the Department in the past and we will continue to try to work with the Department. And I understand, too, that we have a meeting with the Secretary this week.

Mr. Chairman, earlier in the process which culminated in the drafting of the amendments now under consideration, several parties outside the native community expressed concern that the approach embodied in the 1991 amendments might somehow be unconstitutional.

To satisfy those concerns, AFN prepared a legal memorandum which analyzes the constitutional implications of the proposed legislation. The memorandum concludes that the approach embodied in S. 2065 and H.R. 4162 is constitutional. In doing so, the memorandum is consistent with the views of the U.S. Department of Justice which is presently vigorously defending the constitutionality of the Indian Land Consolidation Act before the United States Supreme Court. A copy of the memorandum is attached to this testimony, and I would request that it be entered and printed into the hearing record in full.

Senator MURKOWSKI. Without objection, it will be entered into the record.

Ms. LEASK. As a result, we disagree with the Department of Interior that there could be any liability. But even if there are constitutional problems, there is a section of the bill which eliminates any financial liability to the Federal Government.

In closing, Mr. Chairman, I would like to again express the appreciation not only of the AFN Board of Directors, but also of the entire native people, for the commitment which you and other members of the subcommittee and Senator Stevens, who it not a member of this committee, have made to ensuring that Alaska Natives are afforded the opportunity to pursue their own destiny through the implementation of a land claim settlement which conforms to the real economic and social needs of the Alaska Native people.

We continue to look forward to working very closely with you and your staff to ensure that the effort to amend the Alaska Native Claims Settlement Act is done in a manner which will achieve this important goal and that it is a success.

Thank you very much.

[The prepared statement of Ms. Leask follows:]

TESTIMONY
OF
JANIE LEASK
PRESIDENT OF THE
ALASKA FEDERATION OF NATIVES
ON S. 2065 AND H.R. 4162
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

AUGUST 4, 1986

Mr. Chairman, members of the subcommittee, my name is Janie Leask. I am president of the Alaska Federation of Natives (AFN). The AFN board of directors is composed of a representative of each of the thirteen regional corporations established pursuant to the Alaska Native Claims Settlement Act (ANCSA), a representative of each of the twelve Native regional nonprofit associations which provide health, housing, and related services to Alaska Natives in each geographic region described in section 7(a) of ANCSA, and twelve representatives of village corporations, and Indian Reorganization Act and traditional Native village councils. The totality of the over 60,000 Natives who reside in Alaska are shareholders of, or are represented by, AFN's member corporations and organizations. On behalf of AFN I would like to express our appreciation for the opportunity to testify today on S. 2065 and H.R. 4162, the version of S. 2065 recently passed by the House of Representatives.

The 1971 settlement of the aboriginal land claims of the Alaska Native people was an event of significant importance in the history of the federal government's relationship with Native Americans. However, at the time ANCSA was enacted, Congress focused most its attention on the question of how much land would be retained in Native ownership and how much money would be paid to extinguish aboriginal title. By comparison, the manner in which the settlement would be implemented received substantially less consideration.

However, once Congress completed its work and AFN, the Department of the Interior, and the State of Alaska began to implement the Act, the parties soon identified a series of problems with the structure of the settlement. As the problems were identified, they were presented to Congress. And Congress responded. In 1976 and 1980 Congress enacted amendments to ANCSA that substantially improved the opportunity for Alaska Natives to implement the settlement in a fair and workable manner.

However, two important concerns remain: Alaska Natives are concerned that Native control of ANCSA corporations that hold legal title to Native land may be lost after 1991, and Alaska Natives are concerned that Native land owned by ANCSA corporations may be taken involuntarily.

In response to these concerns, AFN initiated an extraordinary series of meetings and discussions within the Native community, and eventually held a special 1991 convention, to develop a series of amendments to ANCSA to protect continued Native ownership and control of ANSCA corporations and the land owned by ANCSA corporations. That process of internal discussion and debate has been described to the subcommittee in prior testimony and, consequently, need not be repeated here.

The effort culminated in the drafting of a series of amendments to ANCSA which AFN presented to the Alaska congressional delegation. On February 6, 1986, Senators Murkowski and Stevens introduced the amendments as S. 2065. Congressman Young introduced H.R. 4162. With minor exception, the text of both bills was identical.

Since that time, both this subcommittee and the House

Committee on Interior and Insular Affairs have held hearings on both bills. In that regard, the letter which the Alaska Republican gubernatorial candidates recently delivered to the subcommittee is as puzzling as it is disappointing. The letter requests the Senate to delay action on 1991 legislation for at least a year because "Alaskans have not been granted adequate time in which to discuss and fully understand the far-reaching consequences of these amendments."

In fact, as every signatory is, or should be, aware, this subcommittee has gone to considerable effort to provide all Alaskans an opportunity to express their views on S. 2065. In addition to this hearing, the subcommittee has held hearings on S. 2065 in Anchorage, Fairbanks and Bethel. Workshops on the bill have been conducted at Hoonah, Juneau, Sitka, Ketchikan, Kotzebue and Barrow. At least two of the seven signatories - Dick Randolph and Arliss Sturgulewski - testified at the Anchorage hearing. Each of the other signatories had the same opportunity.

In Village Journey, the report of the Alaska Native Review Commission, Canadian jurist Thomas Berger has described in vivid detail the problems with the implementation of ANCSA which make the expeditious enactment of 1991 legislation a matter of extraordinary importance to the future of the Alaska Native people. Each of the Republican gubernatorial candidates is, or if they are not, should be, thoroughly familiar with the contents of Justice Berger's report. For that reason, their eleventh hour attempt to play politics with our future is a profound disappointment. And for that reason, their request for a delay should be rejected.

With respect to S. 2065, as previously mentioned, at the time it was introduced the text of the bill was substantially similar to the text of H.R. 4162. However, during the course of the legislative process in the House of Representatives, AFN, the State of Alaska and other interested parties had an opportunity to do considerable additional work on the bill. In significant measure, that work is reflected in the version of H.R. 4162 which passed the House and which has been referred to this subcommittee for consideration in the Senate. For that reason, I would hope that the version of H.R. 4162 passed by the House, rather than S. 2065, will be adopted by the subcommittee as the mark-up vehicle for reporting the 1991 amendments to the Senate.

In that regard, I would like to identify the major differences between S. 2065 and the version of H.R. 4162 passed by the House, and to offer several additional suggestions for changes to the bill:

1. Inheritance of Native Corporation Stock by NonNatives.

The delegates to the special AFN 1991 convention, and the members of the AFN board of directors have been unwaivering in their concern that control over the future implementation of the settlement not be compromised through the inheritance of ANCSA corporation stock by nonNatives. S. 2065 does not satisfactorily address this problem. Rather, the bill would amend section 7(h)(3) of ANCSA to authorize an ANCSA corporation to purchase stock inherited by nonNatives. The House of Representatives recognized that this approach cannot reasonably be expected to prevent the eventual loss of a significant amount of corporate control to nonNatives. Consequently, in addition to the right of purchase, H.R. 4162 prohibits nonNatives who inherit stock from voting, and provides that if a shareholder has not disposed of his stock by will and has no heirs who are Alaska Natives, then rather than passing to nonNatives pursuant to the applicable laws of intestacy, the stock will escheat to the corporation. This approach, while contrary to the strong and near unanimous views of the Native community on this subject, is an improvement over the approach now set forth in S. 2065.

2. Shareholder Petitions.

In addition to the question of whether restrictions on the sale of stock should be removed, H.R. 4162 authorizes ANCSA corporation shareholders to petition the corporation board of directors to hold a vote on any, or all, of the questions about the future of the corporation which the 1991 amendments authorize the shareholders to decide. AFN supports this change.

3. Number of Shareholders Needed To Remove Restrictions on the Sale of Native Corporation Stock.

H.R. 4162 requires a majority of the outstanding shares of stock in an ANCSA corporation to vote to remove restrictions on the sale of the corporation's stock before such restrictions may be removed. AFN strongly supports this provision.

4. Bristol Bay Native Corporation Provision.

From the outset of the discussion and debate which culminated in the presentation of the 1991 amendment package to the Alaska congressional delegation, AFN and its member corporations and organizations have recognized that the attitudes and needs of the shareholders of ANCSA corporations may frequently be as different as the attitudes and needs of the members of different Indian tribes in the lower 48 states. Just as a course of action which may be appropriate for the Navajos may be inappropriate for the Passamaquoddys, a course of action which may be appropriate for the shareholders of one corporation may be inappropriate for the shareholders of another. For that reason, at the request of the Bristol Bay Native Corporation, section 6 of S. 2065 establishes a special procedure for considering the question of whether to remove restrictions on the sale of stock which is only available to the shareholders of the Bristol Bay Native Corporation and the village corporations within the Bristol Bay region. At their request, the House amended H.R. 4162 to authorize the Cook Inlet Region, Inc., the Aleut Regional Corporation, the Koniag Regional Corporation, and the village corporations within the Cook Inlet and Aleut regions to use the Bristol Bay Native Corporation procedure should they so desire. The House also added language which requires a board of directors that desires to use this procedure to put the question of whether to retain restrictions on the sale of stock to a vote of the shareholders. AFN supports these changes.

5. Protection for Assets of Corporations Which Have Been Involuntarily Dissolved.

H.R. 4162 adds a new subparagraph (v) to section 21(d)(1)(A) of ANCSA to ensure that land is not lost if an ANCSA corporation is dissolved involuntarily. In addition, section 7 of H.R. 4162 authorizes the shareholders of a corporation that has been disolved involuntarily to convey the corporation's assets, including land, to a qualified transferee entity. AFN supports these changes.

6. Federal Programs.

H.R. 4162 contains a new section 17 which amends section 29 of ANCSA to ensure that benefits derived from ANCSA are not charged against benefits to which a shareholder may be entitled under a federal, federally assisted or state program for which the shareholder is eligible as a citizen of the United States. Section 17 also provides that so long as more than 50 percent of the voting power of an ANCSA corporation is controlled by Alaska Natives, the corporation shall continue to be considered to be controlled by Alaska Natives for all purposes of federal law, including federal laws relating to corporations and businesses owned by minorities. AFN supports these provisions.

7. Relationship Between 1991 Amendments And The Governmental Authority of Alaska Native Tribes.

From the outset, AFN has consistently taken the position that the 1991 amendments do not, and should not, in any way affect the extent of the governmental powers of Alaska Native tribes. For that reason, the draft of the amendments AFN submitted to the Alaska congressional delegation contained a disclaimer clause intended to make that point clear. Since S. 2065 and H.R. 4162 have been introduced, that clause has been the subject of some controversy, and even more confusion. Most of the controversy has revolved around allegations that the text of the clause lends support to the assertion that Alaska Natives living in rural villages are federally recognized Indian tribes with powers of self-government similar to the powers of self-government which federally recognized tribes exercise on Indian reservations in the lower 48 states. Although the House Committee on Interior and Insular Affairs recognized that the concerns articulated in this regard are unfounded, the committee nevertheless revised the text of the clause to make that point clear. However, there is now concern that in doing so the committee may have inadvertently tilted the balance in the other direction. In order to put this controversy to rest once and for all, AFN suggests that the following language be substituted for the text of section 7c of ANCSA in section 8 of H.R. 4162:

> No provision of the Alaska Native Claims Settlement Act Amendments of 1986 shall be construed as in any way affecting the scope of the governmental powers of Alaska Natives.

8. Technical and Perfecting Amendments.

In addition to the changes described above, H.R. 4162 contains technical and perfecting changes to the text of H.R. 4162 and S. 2065 as introduced which are too numerous to detail. However, I will be happy to make AFN staff available to work with your staff to ensure that each of these changes is identified, and its purpose explained, prior to the committee's consideration of the legislation.

9. Federal Tax Liability For Transfers To Qualified Transferee Entities and Wholly Owned Subsidiaries.

A recently identified problem which H.R. 4162 does not address is the question of ensuring that a transfer of assets, particularly land, from an ANCSA corporation to a qualified transferee entity or a wholly owned subsidiary is not considered a taxable event. AFN has developed language that clarifies this point which it will make available to your staff.

Lastly, Mr. Chairman, early in the process which culminated in the drafting of the amendments now under consideration several parties outside the Native community expressed concern that the approach embodied in the 1991 amendments might somehow be unconstitutional. To satisfy those concerns, AFN prepared a legal memorandum which analyzes the constitutional implications of the proposed legislation. The memorandum concludes that the approach embodied in S. 2065 and H.R. 4162 is constitutional. In doing so, the memorandum is consistent with the views of the U.S. Department of Justice which is presently vigorously defending the constitutionality of the Indian Land Consolidation Act before the United States Supreme Court. See Irving v. Clark, 758 F.2d 1260 (8th Cir. 1985), probable jurisdiction noted 106 S.Ct. 783, 88 L.Ed.2d 761 (1986). A copy of the memorandum is attached to this testimony and I would request that it be entered and printed in the hearing record in full.

In closing, Mr. Chairman, I would like to again express the appreciation not only of the AFN board of directors, but also of the entire Alaska Native people, for the commitment which you and Senators Murkowski, Johnston and the other members of the subcommittee, and Senator Stevens, who is not a member of this committee, have made to ensuring that Alaska Natives are afforded the opportunity to pursue their own destiny through the implementation of a land claim settlement which conforms to the real economic and social needs of the Alaska Native people. AFN looks forward to continuing to work closely with you and your staff to ensure that the effort to amend the Alaska Native Claims Settlement Act in a manner which will achieve this important goal is a success.

Thank you.

VENABLE, BAETJER, HOWARD & CIVILETTI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

BALTIMORE OFFICE
1800 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201
(301) 244-7400

RICHARD M. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1945)
CHARLES MCH. HOWARD (1870-1942)

KENNETH C. BASS, III

SUITE 1200
1301 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
(202) 662-4300

WRITER'S DIRECT NUMBER IS
662-4390

VIRGINIA OFFICES
PLAZA SUITE THREE
4141 NORTH HENDERSON ROAD
ARLINGTON, VIRGINIA 22203
(703) 243-5000

SUITE 500
2000 CORPORATE RIDGE
McLEAN, VIRGINIA 22102
(703) 749-3500

January 17, 1986

THE CONSTITUTIONALITY OF THE AFN

1991 LEGISLATION

THE CONSTITUTIONALITY OF THE AFN 1991 LEGISLATION

EXECUTIVE SUMMARY

The 1971 Alaska Native Claims Settlement Act ("ANCSA") was a novel approach to the settlement of Indian land rights. Historically the United States had taken Indian lands by re-locating tribes to reservations, entering into treaties, or simply taking the lands. In the case of Alaska Congress settled the claims directly by legislation, created a complicated structure of corporations, transferred title to approximately 44 million acres of land to those corporations, and paid those corporations almost $1 billion for extinguishing the Native claims to the rest of the land in Alaska.

In 1971 Congress recognized that the Alaska Natives were not prepared to step immediately into the corporate world and it therefore provided for a 20-year "window of aculturation." During this period the stock in ANCSA corporations was to be inalienable, thus allowing the Natives to adjust to the new circumstances before being subjected to pressures to sell their stock.

The original 20-year restriction on stock alienation is scheduled to expire in December, 1991. In the years since the settlement Alaska Natives have learned that alienation of ANCSA stock in 1991 is not consistent with their needs, interests or desires. Many Natives want to continue the prohibition against selling the ANCSA stock, while others want to be able to sell their stock before 1991.

In 1971 Congress also decided to limit participation in the settlement to the Natives who were alive on the date of enactment of the legislation. The inevitable consequence of this decision has been to create two classes of Alaska Natives: those born on or before December 18, 1971, who own stock in ANCSA corporations; and those born later who are not entitled to ANCSA stock. There is widespread dissatisfaction throughout the Native community over the fact that Native children do not receive ANCSA stock despite the fact they may be just as much a Native as their parents who did receive stock.

These two concerns, along with other aspects of the settlement, have generated a diversity of opinion within the Native community. Over the past several years the Alaska Federation of Natives ("AFN") has developed a package of amendments to ANCSA to accommodate those diverse opinions. The primary purpose of the amendments is to permit each Native corporation to decide for itself how the settlement will be implemented in the future. Each corporation would be given a set of options for structuring the corporation. The shareholders of each corporation would decide which options to choose.

The legislation has been developed in close consultation with the Alaska congressional delegation and the Department of the Interior. During the consultations questions have been raised about the constitutionality of two specific provisions of the amendments: 1) continuation of the prohibition on selling ANCSA stock, and 2) authorization to issue additional stock, without charge, to Natives who were left out of the original settlement. The memorandum addresses those constitutional issues and concludes that both provisions are constitutional. The arguments in support of those conclusion are detailed in the memorandum and summarized here.

While the structure of ANCSA was a novel approach to the settlement of Indian land claims, the changes proposed by the AFN legislation reflect experiences that have been common to other Indian settlements. On several occasions settlements have involved some form of "restricted property," frequently in the form of prohibitions on alienating settlement property. Often those prohibitions on alienation have been limited to a fixed period of time. Congress has incorporated such time-limited restrictions on alienation in Indian settlement legislation prior to ANCSA. Prior to ANCSA Congress had amended some of those settlements to extend the restraint on alienation. On occasion those changes have been litigated and upheld against claims that the modifications were an unconstitutional taking of vested property rights.

In *Tiger* v. *Western Investment Co.*, 221 U.S. 286 (1911), the Supreme Court upheld the power of Congress to impose a new restriction on alienation of property received in an Indian land settlement. In that case the restriction was imposed prior to the expiration of an original five-year restraint on alienation. In *Brader* v. *James*, 246 U.S. 88 (1918), the Supreme Court went further and upheld the power of Congress to impose an additional restriction on alienating settlement property even though the additional restriction was enacted after the original restraint on alienation had expired.

Although the *Tiger* and *Brader* cases arose in the context of 19th century Indian land settlements, the principles they reflect are valid today. In 1976 the Supreme Court reviewed the constitutionality of a congressional modification of the Northern Cheyenne settlement. Under the original settlement certain mineral and subsurface interests had been reserved for the benefit of the entire tribe for a period of fifty years, with the provision that at the end of that time title to the mineral estate would pass to the individual

Indians who received title to the surface estate through the allotment provisions of the settlement. Forty-two years after the original settlement Congress decided to terminate the grant of mineral rights to the allottees and reserved title to those rights in perpetuity for the benefit of the entire tribe. This modification was attacked as an unconstitutional deprivation of vested property. The Supreme Court rejected the challenge to the modifications of the settlement in *Northern Cheyenne Tribe* v. *Hollowbrest*, 425 U.S. 649 (1976), relying on the "wide ranging congressional power to alter [Indian settlements] until those plans are executed." *Id.* at 656.

The AFN proposal to authorize issuance of stock to Natives left out of the 1971 settlement also reflects an experience encountered in prior Indian settlements. In 1902 legislation dealing with the Cherokees, Congress provided that the settlement benefits would be limited to Cherokees living at that time. Four years later Congress provided that the tribal rolls would be re-opened to include Indians born after 1902.

That provision was attacked as an unconstitutional deprivation of vested rights. The Supreme Court concluded that while the intent of the 1902 law had clearly been to exclude Cherokees born thereafter, that original intention did not confer any vested property rights on the original beneficiaries of the settlement that would preclude Congress from later admitting the newly-born members of the tribe to the benefits of the settlement. *Gritts v. Fisher,* 224 U.S. 640 (1912).

The *Gritts* decision remains "good law" and has been applied and followed by the Supreme Court as recently as 1972. In 1933 Congress passed a law withdrawing certain public lands in Utah for the benefit of a group of Navajos residing on that land. In 1968 Congress amended the original settlement to include as beneficiaries of the mineral estate not only Navajos residing on the reserved land, but all Navajos residing in the county. This expansion of the beneficiaries was challenged as a deprivation of vested property rights. Again the Supreme Court rejected the challenge, holding the inclusion of additional Navajos "was well within the power of Congress to alter [the original] distribution scheme." *United States v. Jim,* 409 U.S. 80, 82 (1972).

The Supreme Court decisions sustaining adjustments of Indian settlements reflect a general principle that Congress has broad powers under the Commerce Clause to regulate Indian affairs and adjust settlements of Indian rights, at least as long as those adjustments occur at the level of the individual Indian and do not deprive the tribe as a group of vested rights. That well-established and long-standing principle of Indian and constitutional law is fully applicable to ANCSA.

The courts have consistently held that ANCSA is Indian legislation and should be interpreted as such. It was and is and historic settlement of Native land claims, but it remains part of the broader fabric of Indian law. Within that context the AFN proposals are not unusual and are sustained by decisions of the Supreme Court in closely analogous contexts.

Moreover, even when viewed outside the context of Indian law as purely corporate law matters, the AFN proposals are constitutional. None of the proposals would deprive any existing stockholder of title of stock or the rights of voting and receiving dividends that attach to that stock. It is true that some of the proposals, if implemented by an ANCSA corporation, could diminish the value of stock, but diminishment of value is not, by itself, deprivation of property in violation of the Constitution.

The Supreme Court has addressed this general Fifth Amendment issue on several occasions outside the context of Indian matters. The most recent case dealing broadly with the concept is *Penn Central Transportation Co.* v. *New York City*, 438 U.S. 104 (1978). In that case the Court held that the constitutionality of a particular alteration of property rights must be determined by the particular circumstances and that a reviewing court must look closely at the economic consequences, "particularly the extent to which the [alteration] has interfered with distinct investment-backed expections." *Id.* at 124. The Court also made it clear that even the complete elimination of a particular aspect of "title" would not necessarily constitute a taking since the Fifth Amendment protects property, not individual "discrete segments" of rights in that property. *Id.* at 130-31.

The *Penn Central* principles have been applied in a non-Indian context where Congress and the Interior Department prohibited alienation of eagle feathers, regardless of the fact that the feathers had been lawfully acquired prior to the regulation. This total elimination of the right to alienate private property was upheld against constitutional challenge in *Andrus* v. *Allard*, 444 U.S. 51 (1979). That case strongly supports the power of Congress to authorize elimination of the expection of the right to alienate ANCSA stock. when the prohibition on selling eagle feathers was adopted, present owners then had the right to sell the feathers, unlike the situation today where no ANSCA stockholder can sell their stock. Certainly if Congress and the Interior Department can eliminate the right to alienate private property to protect eagles, they can take similar steps to further the preservation of Alaska native culture and exonomic enterprises by extending the prohibition against alienating ANCSA stock.

Moreover, in applying the *Penn Central* principles it is important to remember that individual ANCSA stockholders do not have "investment expectations" since they did not invest their own capital to acquire their stock. The land rights that were extinguished by the settlement were *tribal* rights, not individual claims of title to lands. The modifications that would be permitted under the AFN amendments will admittedly change the expectations some shareholders may have had in 1971, but those expectations are not founded on any individual investments and do not rise to the level of protected property rights.

The authorization for issuing new stock to Natives left out of the original settlement does not raise traditional corporate law issues concerning dilution of stock. Under general corporate principles there is a broad latitutde for setting the price for new stock, limited by concerns over self-dealing and actions of a self-interested majority to injure minority shareholders. Those concerns are absent in the context of the Native desire to include in the settlement the Natives who were left out in 1971. The AFN proposal reflects a laudable intent of self-denial by existing shareholders to benefit the Native community, not the improper goals of self-benefit that underlie the corporate law limitations on excessive dilution of stock.

In any event dilution of stock value, without interfering with the right to vote the stock or receive dividends, would not amount to a taking under the *Penn Central* analysis.

Whether viewed in the context of Indian or corporate law, the AFN proposals are constitutional. Although some have raised questions about the validity of that conclusion, AFN has not seen any written analysis supporting the argument against the constitutionality of the proposals. In the absence of such a written analysis and in light of the authority presented in this memorandum, AFN hopes that the constitutional debate can be put aside to permit focussed discussions of the significant policy issues involved in the 1991 legislation.

5604w

THE CONSTITUTIONALITY OF THE AFN 1991 LEGISLATION

I. Introduction

Over the past few years the Alaska Natives have been reviewing the implementation of the Alaska Native Claims Settlement Act ("ANCSA") with emphasis on the changes in the ANCSA structure that will occur in 1991. Of particular concern is the fact that, unless ANCSA is amended, all the existing stock in ANCSA corporations will be subject to sale in December 1991. This event would mark the single most significant change in the ANCSA structure since enactment of the original settlement in 1971. At that time Congress decided to use modified Alaska corporations as the implementation vehicle for the settlement. Recognizing that the modern corporation was foreign to the Native culture, particularly in bush Alaska, Congress included a "window of aculturation" during which the Natives could adapt to the corporate world. Section 7(h)(1) of ANCSA provided that for a period of twenty years "the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated." *43 U.S.C. §1606(h)(1).* This prohibition on alienation of the stock was designed to insure that the ANCSA corporations would remain under Native control for at least 20 years and that individual

Natives would not become immediately subjected to pressures to sell their stock and potentially be victimized by the fraud and overreaching that had characterized prior Indian settlements.

The early years of ANCSA required significant dedication of time and money to prepare for implementation of the settlement. Corporations had to be organized; leaders had to be elected; land selection regulations had to be promulgated, revised and reviewed; lands had to be selected; and initial investment decisions had to be made. That agenda left precious little time for planning the future. In the past few years the Natives have looked more closely at their future under ANCSA, their present and their past. What they have seen is troubling to them.

The Alaska Native settlement had its basis in the aboriginal land rights of the Native people of Alaska, rights that took the form of untested claims to almost all of the land in Alaska. Those claims had existed over the years and never been extinguished. By the late 1960's the claims virtually blanketed the state and had created a legal barrier to the development of oil and gas resources on the North Slope. It was widely conceeded that some resolution of these historic claims was necessary.

The late 1960's were marked by one of the not infrequent swings in the Indian policy pendulum. The 1950's had been marked by federal experiments with a policy of "termination" under which Indians were to be "set free" from federal supervision. This policy had proven unsound and the focus for the 60's and early 70's became "self-determination without termination." Under this policy Indians were to have primary responsibility for decisions affecting their own welfare, but were not to be set loose to fend for themselves without any federal supervision. Against this background of Indian policy and the specific development needs of Alaska, business corporations with a 20-year prohibition on alienation of stock were chosen as the means for implementing the settlement. The structural device was adopted without significant debate or discussion. The focus of the legislative debates in 1969-71 was on the amount of the settlement, the role of regional and local entities, and the relationship of the state and federal governments to the settlement. There was no significant discussion of the impact of corporations on the Native lifestyle and culture.

Today there is widespread concern among Alaska Natives about lifting the stock alienation restriction. That concern finds expression in a wide variety of opinions. Some Natives look forward in eager anticipation to the day when they can sell their stock and "cash out" of the settlement. Other Natives have come to view Alaska business corporations as antithetical to Native values and are exploring ways of continuing to implement the settlement in other structures.

Many - if not most - individual Natives are confused and bewildered and do not have a clear preference regarding the future of ANCSA.

The Alaska Federation of Natives has devoted many years of study and discussion to the "1991 project." This project began with a systematic and comprehensive examination of the settlement to seek areas of concern that might require legislative amendments to ANCSA to carry out the Natives' desires for controlling their own future. That process has itself been protracted and complicated by the wide range of views that exist within the Native community. Fortunately one universal agreement has emerged: each ANCSA corporation should be able to decide for itself how to structure the future implementation of the settlement - there should be a common menu of options, but no corporation should be forced to follow a particular course against the wishes of its own Native stockholders.

Using that common point of agreement, the Alaska Natives have drafted proposed amendments to ANCSA.[1] Those amendments reflect a consensus that was expressed in a number of resolutions adopted at the AFN Special Convention in March 1985, and the AFN Annual Convention in October, 1985. The draft legislation has been circulated widely throughout Alaska and reviewed by the key individuals in Congress and the

---

[1] A copy of the draft is attached to this memorandum.

Interior Department. Modifications have been made based on suggestions from Natives and non-Natives. The general purpose of the amendments is to create a variety of options for each ANCSA corporation to use in deciding how to fulfill the desires of its own stockholders. It should be noted that the basic purpose of the amendments is to permit the Native stockholders to decide their own future rather than having that future determined for them through imposition of law.

Several primary areas of concern are addressed in the draft legislation: 1) Including in the benefits of ANCSA those Natives born after enactment and those Natives entitled to be enrolled originally who failed to become enrolled; 2) Special benefits to Native Elders; 3) Protection of Native lands; 4) Alternative legal entities such as non-profit corporations, Alaska co-operative corporations and IRA corporations to implement the settlement; and 5) Provisions for retaining, modifying or eliminating the prohibition on alienation of ANCSA stock.

During the course of discussions about the amendments, some individuals have raised concerns about the constitutionality of the proposed changes to the restraint on alienation and the authorization for issuance of additional stock to Natives left out of the original enrollment. It has been suggested that the proposed changes would deprive individual shareholders of vested property rights. This memorandum addresses those two concerns.

II. General jurisprudence of the Fifth Amendment

The Fifth Amendment to the United States Constitution provides that "private property [shall not] be taken for public use without just compensation." The original intent of this provision was to insure that whenever the federal government exercised the inherent sovereign power of "emminent domain" and confiscated real property for a public use it would be required to pay the owner "just compensation." *See generally* The Constitution of the United States of America, Analysis and Interpretation, *Senate Doc. No. 92-82*, 92d Cong., *2d Sess. (1973), at 1177-91*. Under the original meaning the constitutional requirement for just compensation did not arise until there had actually been a "taking" of the property and a claim by the government that the property belonged to it rather than the private owner. Under the earlier cases "there is broad dicta that no one may claim damages on being compelled to render obedience to a police regulation designed to secure the common welfare .... 'The distinguishing characteristic between eminent domain and the police power is that the former involves the *taking* of property because of its need for the public use while the latter involves the *regulation* of such property to prevent the use thereof in a manner that is detrimental to the public interest.'" *Id. at 1189*, quoting *1 Nichols'*, The Law of Eminent Domain, J. Sackman ed. (3d ed. 1964), 1.42, emphasis in original.

The seemingly clear distinction between "taking" and "regulating" has not, however, been strictly applied. The prohibition against "taking" has been applied in some cases where the owner retained possession and ownership of the property, but where the application of a governmental regulation so limited the value of the property as to amount to an effective taking. *See, e.g., Welch v. Swasey,* 214 U.S. 91 (1909); *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 413-14 (1922); *Goldblattt v. Town of Hempstead,* 369 U.S. 590, 594 (1962). *But cf. Miller v. Schoene,* 276 U.S. 272 (1928) (mandatory destruction of cedar trees to prevent spread of rust infection did not require compensation).

Nothing in the proposed ANCSA amendments amounts to an actual "taking" of any property. Under any of the proposals each existing ANCSA stockholder will retain full title to his or her stock. What is involved are a number of changes in the rights of existing stockholders. Several of those changes would conceededly result in a lessening of the value of the stock, although the extent of this diminishment is uncertain. This fact places the constitutional issue immediately in the gray area of cases where there has been no actual taking, but an assertion that the effect of government requlation is so drastically diminish the value of private property as to amount to a taking under the law.

The most recent Supreme Court decision containing a comprehensive analysis of the "taking" issue is *Penn Central Transportation Co. v. New York City,* 438 U.S. 104 (1978). In that case the City of New York had passed a landmark preservation law and designated the Grand Central Terminal as an historic building. The owner of the terminal had been denied a permit to construct an office building on top of the terminal and brought suit contending that the prohibition on development of the air rights amounted to a taking of the property because of the reduction in the value of the property. The Supreme Court rejected the challenge.

Penn Central articulated several principles that are relevant to the constitutionality of the AFN proposal. First, the Court stated clearly that it did "not embrace the proposition that a 'taking' can never occur unless the government has transferred physical control over" the property. *Id.* at 122, n. 25. Second, the Supreme Court stated it has not developed "any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action be compensated by the government .... Indeed, [the Court has] frequently observed that whether a particular restriction will be rendered invalid by the government's failure to pay for any losses proximately caused by it depends largely 'upon the particular circumstances [in that] case.'" *Id.* at 124, quoting from *United States v. Central Eureka Mining Co.,* 357 U.S. 155, 168 (1958). Third, in evaluating the constitutionality of a particular law, the Court will look closely at "the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations ...." *Id.* (emphasis added). Fourth, "'taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking, [the Supreme] Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole ...." *Id.* at 130-31.

The proposed changes to ANCSA all deal with corporate stock and the rights of shareholders. None of the proposals would deprive any existing stockholder of title to any stock. Each of the proposals would allow a modification of one or more existing attributes of ANCSA stock. None of the proposals would constitute governmental action of a permanent nature. Each of the proposals allows the affected corporations and its shareholders to vote on maintenance, termination or creation of a particular restriction. The future continuation of restrictions would remain uncertain since each corporation would retain the option to make a different decision at a later time. The changes would not extend beyond altering existing, limited aspects of corporate stock. No existing voting rights would be eliminated. No existing rights to receive dividends would be eliminated. Although it is assumed that adoption of the most restrictive set of options would significantly reduce the theoretical "market value" of the stock, even on a fully restricted basis the stock would retain substantial economic value.[1]

In analyzing the constitutionality of the AFN proposals, it bears emphasis that the Supreme Court has stated there is no talismanic test for constitutionality and that each case is determined by its own unique facts. This principle necessarily means there is no definitive answer to the constitutionality debate short of an actual decision by a court. Nonetheless, analysis of the proposals in light of the Supreme Court's decisions shows that the argument in favor of constitutionality is quite strong.

III. Constitutionality of the Extension of the Restraint on Stock Alienation

The draft legislation amends section 7(h)(1) to provide for an indefinite extension of the restraint on alienation of ANCSA stock, subject to periodic votes by the stockholders to terminate the restraint and permit transfer of ANCSA stock by individual stockholders.[1] In considering the constitutionality of this provision, it is important to understand exactly what the amendment does and does not accomplish. The amendment would do the following:

---

[1] For example, even if a corporation were to maintain an indefinite ban on alienation, the stock would retain value for the expected income stream from future dividends. This value could be substantial, particularly given the unique aspects of "pooled investments" that flow from the revenue sharing provisions of § 7(i).

1. Extend the period in which ANCSA stock could not be transferred, unless the stockholders act to terminate the restriction
2. Permit the stockholders to terminate the restriction prior to December 18, 1991, thus allowing sale of ANCSA stock earlier than is now permitted under existing law
3. Provide that the decision on alienation would be made by the stockholders not the ANCSA corporate management, the federal government or the State of Alaska
4. Retain existing stockholder rights of stock ownership, including all existing rights to receive and invest dividends and vote on corporate matters
5. Authorize each ANCSA corporation to provide for "dissenters' rights" when a vote is taken on continuing the restraint on alienation so that shareholders who want to dispose of their stock can "sell" it back to the corporation.

---

[1] The draft provides that the restraint on alienation will be continued automatically but that each ANCSA corporation will have an option to "opt out" of the extension of the restraint and thus permit transfers of stock. While this approach is only one of several possible mechanisms for permitting the stockholders of each corporation to decide on the alienation issue, it is the one which has generated the most concern about constitutionality. The balance of this memo discusses the issue in the context of this "opt-out" approach and concludes that it is constitutional. Other approaches, such as permitting each corporation to "opt in" to a continued restraint on alienation or providing for an automatic extension of the restriction for a fixed period of time rather than indefinitely, appear to be of less concern. Thus the memo proceeds to analyze the "worst case" alternative and the conclusions would remain valid with respect to the alternative mechanisms that have been suggested.

The amendment would not do any of the following:

1. Deprive stockholders of their stock
2. Provide that the stock could never be alienated, regardless of the wishes of the majority of the shareholders
3. Eliminate the economic value of the stock

This brief summary is sufficient to show that the proposed legislation does not destroy the value of ANCSA stock, although it does authorize significant changes in current law and the expectancies that shareholders may have regarding future disposition of their stock. It is important to note that the changes are not all on one side of the ledger. The amendment provides for options that actually may make the stock more, not less, valuable. For example, ANCSA stock cannot now be sold until after December 18, 1991. If the proposed legislation were enacted, it is possible that stock in a particular corporation could be sold several years prior to that date. Moreover because the amendment would authorize a corporation to purchase stock from its shareholders during periods of inalienability and to allow dissenters' rights beyond the rights available under current Alaska law, it provides an additional benefit to shareholders.[1]

---

[1] Consistent with the "worst case" approach of this paper, the legal analysis will not rely on the aspects of the amendment which increase the value of stock to justify its constitutionality by some variation of a "balancing test," but will assess the issue as if it were a naked, indefinite extension of the restraint on alienation imposed directly by Congress itself.

A. Viewed in a Corporate Context the Proposal Is Constitutional

For purposes of this analysis, we accept the proposition that some legislative changes in the rights of corporate shareholders could amount to a "taking" under the Supreme Court's Fifth Amendment analysis, although the point is not free from debate.[5] We also will analyze the AFN proposal as if it were a direct legislative alteration of shareholder rights rather than an indirect authorization of the

---

[5] The only cases we have found dealing with this precise issue are of limited utility. In *Lord v. Equitable Life Assur. Society*, 194 N.Y. 212, 87 N.E. 443 (1909) the New York Court of Appeals upheld against constitutional attack a state law permitting stock life insurance companies to convert to mutual insurance companies. The challenge there was that the law effectively deprived existing stockholders of a vested property right by extending the corporate franchise to policy holders. The court held that, under ordinary circumstances, the right to vote common stock is a vested property right. However, in that case the original charter provided for conversion to a mutual company upon the vote of three-fourths of the shareholders while the new statute provided for "mutualization" upon a majority vote. This change in method was deemed constitutional. In *Miller v. State*, 82 U.S. 478 (1872), the Supreme Court upheld a state law changing the apportionment of directors of a railroad corporation so that where certain stockholders had the right to elect nine of 13 directors prior to the new law they had the right to elect only 4 of 13 after the amendment. In *Opinion of the Justices*, 333 So.2d 125 (Ala. 1976), the Alabama Supreme Court issued an advisory opinion to the state legislature that a proposed law authorizing corporate lessees to vote the same as corporate members would be an unconstitutional denial of due process and an impairment of the obligations of contract in violation of the federal constitution. In *Ayers v. Burley Tobacco Growers Coop. Assn.*, 344 S.W.2d 836 (1961), the Kentucky Court of Appeals upheld a law authorizing two-thirds of the directors of a corporation to extend the corporation's life from the twenty years set out in the charter to a perpetual term, although such an extension required the vote of a majority of stockholders under prior law.

ANCSA corporations to themselves alter those rights. Certainly if Congress could itself mandate a particular change, it can authorize the corporations to make that change. While it could be argued that Congress could authorize corporate action that it could not undertake directly, we will not rest on such an argument in this memorandum.[5]

While an extension of the restraint on alienation could effect a reduction in the value of ANCSA stock, the Supreme Court has made it abundantly clear that reduction in value alone -- even a drastic reduction in value -- does not render a statute unconstitutional. The Court has upheld against constitutional attack statutes which the Court assumed reduced the value of the affected property by 75%, *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), and by 87.5%, *Hadacheck v. Sebastian*, 239 U.S. 394 (1915). It is clear that a significant diminution in the value of ANCSA stock will not, in and of itself, render the change in stockholder rights unconstitutional.

Recent Supreme Court cases are, we believe, particularly significant. In *Andrus v. Allard*, 444 U.S. 51 (1979), the Court upheld the constitutionality of an Interior Department regulation prohibiting the sale of eagle feathers. That regulation was, in effect, a perpetual restraint on alienation imposed on all eagle feathers, regardless of how the owner had acquired them. Analytically it was similar to the extension of the alienation restriction in ANCSA, but it was more absolute and permanent. Nonetheless the Court upheld the regulation, noting

---

[5] The Constitution prohibits the government from taking private property. Arguably it does not prohibit the government from authorizing a corporation to itself take private property. *But cf. Western Union Telegraph Co. v. Pennsylvania Railroad Co.*, 195 U.S. 594, (1904) (constitutionality of the right of a telegraph company to, in effect, exercise emminent domain over the property of a railroad.

> the regulations ... do not compel the surrender of the [feathers], and there is no physical invasion or restraint upon them. Rather a significant restriction has been imposed on one means of disposing of the [feathers]. But the denial of one traditional property right does not always amount to a taking. At least where an owner possesses a full "bundle" of property rights, the destruction of one "strand" of the bundle is not a taking, because the aggregate must be viewed in its entirety. *Id.* at 65-66.

The Court noted that the owner was free to dispose of the feathers by will, just as ANCSA stockholders will remain free to devise their stock to Natives or descendents of Natives. Similarly, the ANCSA stockholders will continue to receive dividends and thus recognize economic value, just as the owners of the eagle feathers remained free to derive economic benefits through exhibition of the feathers. *Id.* at 66.

The Court's later decision in *Agins v. City of Tiburon,* 447 U.S. 255 (1980), is also instructive. In that case five acres of unimproved property near San Francisco had been acquired for residential development. After the plaintiffs acquired the property, the city passed a zoning ordinance that limited residential development on the property to single-family homes. Density restrictions for the property would allow one to five residences. The owners sued, claiming the zoning change had effectively destroyed their investment expectations. The Court upheld the ordinances. With respect to the owners' argument that the ordinances impaired their investment expectations, the Court described the test as whether the challenged law "denies an owner economically viable use of his land." *Id.* at 260. It was clear to the Court that the owners had not been denied "economically viable" use of the land since they would be permitted to build up to five homes, assuming a satisfactory development plan. This option permitted them "to pursue their reasonable investment expectations." *Id.* at 262.

We contend that the case for the constitutionality of the AFN proposals is significantly stronger than the case for the constitutionality of the regulations at issue in *Andrus* and *Agins*. In both of those cases the Court upheld severe restrictions on the use or sale of property that had been acquired by the plaintiffs prior to the enactment of the challenged law and were held for their investment value. The plaintiffs in those cases had legitimate "investment expectations." Here such expectations are absent. None of the current ANCSA stockholders have paid for their stock. All of the original stock was issued "free of charge" to the individual shareholders. The value that was surrendered for the stock was the value of the aboriginal land claims, tribal rights that were not the property rights of any individual Native.

The current owners of the stock have not acquired their stock by purchase. They have acquired their rights directly from ANCSA, by inheritance, or by court decree in a divorce proceeding. In none of these cases is there any legitimate "investment expectation." The current owners of ANCSA stock, in effect, are the beneficiaries of a transfer of rights in which they surrendered none of their individual property. Their individual expectations cannot be viewed as resting on an initial investment and thus should not be more protected than the rights of the owners in *Andrus* and *Agins* whose investment expectations were severely curtailed through laws deemed valid against claims of an unconstitutional taking.

B. Viewed in the Proper Indian Context the Proposals Are More Clearly Constitutional

The arguments in favor of the constitutionality of the AFN proposals are even stronger when viewed in the context of Indian legislation. ANCSA remains "Indian legislation." It was -- and remains -- an historic settlement of aboriginal land rights. The courts have consistently treated ANCSA as "Indian legislation." *Alaska Pub. Easement Defense Fund v. Andrus*, 435 F. Supp. 664, 670 (D.Ak. 1977); *Wisenak v. Andrus*, 471 F. Supp. 1004, 1010 (D.Ak. 1979); *Aguilar v.* United States, 474 F. Supp. 840, 846 (D. Ak 1979); *(see also, Edwardsen v. Morton*, 369 F. Supp. 1359 (D.D.C. 1973); *Cape Fox Corp. v. United States*, 4 Ct.Cl. 223, 231, n.11 (1983). The Supreme Court has looked with particular favor on congressional attempts to modify Indian settlements to remedy inequities and problems that emerge during the implementation of a settlement. These changes have frequently been attacked as an unconstitutional interference with "vested rights." The challenges have customarily, if not invariably, been unsuccessful.

Several of the early Constitutional challenges involved changes in the ability of individual Indian who were members of the Five Civilized tribes to sell or dispose of their allotted lands.[1] The United States entered into treaties with the Creek Nation in 1833. *7 Stat. 417*. Pursuant to this treaty the Creeks settled on tribal lands in Oklahoma. In 1893, Congress began a process of dissolving the tribal government and as part of that process enacted a statute providing for allotment of tribal lands to individual Indians. *27 Stat. 645, ch. 209*. That act set in motion a process of negotiations that resulted in passage of the Creek Agreement. As amended in 1902 the agreement provided for allotment of individual lands and included a prohibition on alienation of allotted lands for five years from the date of the act, or until June 30, 1907. *Act of June 30, 1902, 32 Stat. 500, ch. 1323.* Prior to the expiration of this five year period Congress again amended the Creek settlement and provided that allotted lands could not be alienated by the allottee for a period of 25 years and could not be alienated by the full-blood heir of an allottee without the approval of the Secretary of the Interior. *Act of April 26, 1906, 34 Stat. at L. 137, ch. 1876, §§ 19.22.*

---

[1] The Five Civilized Tribes are the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations.

After July 1, 1907, a fullblood heir of a Creek allottee who had inherited an allotment in 1903 conveyed those lands without the approval of the Secretary of the Interior. The heir later brought suit to set aside the conveyance. The transferees contended the requirement for Secretarial approval could not constitutionally be applied to conveyances after June 30, 1907, of lands inherited from allottees after passage of the 1902 legislation. The argument was simple: the allottees had acquired individual property rights under the 1902 legislation which included the right to alienate the land after July 1, 1907, and application of the 1906 act to require Secretarial approval of conveyances made after expiration of the original five-year period of inalienability would unconstitutionally deprive the heirs of vested property rights.

The Supreme Court rejected the argument against the constitutionality of the 1906 legislation. In *Tiger v. Western Investment Co.*, 221 U.S. 286 (1911), the Court held that Congress retained the power to alter the terms and conditions for disposal of Indian lands, even after those lands had been allotted to "civilized" Indians. Speaking directly to the constitutional issue, the Court stated

> it may be taken as the settled doctrine of this court that Congress, in pursuance of the long-established policy of the Government, has a right to determine for itself when the guardianship which has been maintained over the Indian shall cease. It is for that body, and not the courts, to determine when the true interests of the Indian require his release from such conditions of tutelege.

Id. at 315.

In *Tiger* the heir had inherited the lands in 1903 prior to the expiration of the original five-year restraint on alienation and thus had a restricted title when the 1906 act imposed a requirement for Secretarial approval. A different case would arise if an Indian had obtained an unrestricted title prior to the enactment of the 1906 legislation. This issue was presented in *Brader v. James*, 246 U.S. 88 (1918). In that case a fullblood Choctaw Indian had inherited allotted lands in 1905 and conveyed them without Secretarial approval in 1907. The terms of the original Choctaw legislation provided that lands could not be alienated by the allottee for a period of 21 years, but that the restriction ended with the death of the allottee. *32 Stat. 641, ch. 1362.* In 1906 Congress amended the terms of the Choctaw settlement to require Secretarial approval for conveyances by fullblood Choctaw heirs even when the 21 year restriction ended on the allottee's death. The Supreme Court recognized in *Brader* that when the heir inherited the land in 1905, she "received the land free from restriction, and had good right to convey the same ...." *Id.* at 94. The Court held that the act could constitutionally be applied to require Secretarial approval of the 1907 conveyance:

> Notwithstanding Rachel James might have conveyed the homestead allotment after it descended to her, she was a tribal Indian, and as such still subject to the legislation of Congress enacted in discharge of the nation's duty of guardianship over the Indians. Congress was itself the judge of the necessity of legislation for this purpose; it alone might determine when this guardianship should cease .... [W]e can have no doubt of the constitutionality of such legislation. While the tribal relation existed the national guardianship continued, and included authority to make limitations upon the rights which such Indians might exercise in respect to such lands as are here involved. This authority did not terminate with the expiration of the limitation upon the rights to dispose of allotted lands; the right and duty of Congress to safeguard the rights of Indians still continued." *Id.* at 95-96.

Although those decisions are roughly 70 years old, the principles of constitutional and Indian law they state remain valid. The Supreme Court has revisited the subject as recently as 1976. In the 1926 settlement with the Northern Cheyennes, Congress provided for allotment of tribal lands to individual Indians. The original settlement reserved the "timber, coal or other minerals, including oil, gas, and other natural deposits" on the allotments to the tribe, but provided expressly that "at the expiration of fifty years from the date of [enactment] the coal or other minerals, including oil, gas, and other natural deposits, of said allotments shall become the property of the respective allottees or their heirs." *Act of June 3, 1926, 44 Stat. 690, § 3 at 691*. In 1968 Congress revisited the settlement "to terminate the grant to the allottees and to reserve the mineral rights 'in perpetuity for the benefit of the Tribe.' *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649, 643 (1976), quoting from *Act of July 24, 1968, 82 Stat. 424*.

In a subsequent suit to determine the constitutionality of the 1968 alteration of the settlement, the Supreme Court held that the original language did not grant the allottees a vested right in the minerals, but merely an expectancy that Congress was free to change by subsequent legislation. *Northern Cheyenne, supra, at 656-60*. In reaching this decision the Court reaffirmed "the wide ranging congressional power to alter allotment plans until those plans are executed." *Id. at 656*, citing cases including *Brader v. James, supra*.

We submit that the Indian cases further support the constitutionality of the AFN proposals. ANCSA did not terminate the status of Alaska Natives as Indian people; ANCSA affected only tribal property rights, not tribal status or tribal membership. Alaska Natives remain Indian people and Congress retains the power to deal with the Natives as Indian people, just as it retained the power to deal with the property of individual Creeks and Choctaws after passage of the allotment acts.

IV. Constitutionality of the Issuance of Additional Stock to Natives

The draft legislation provides authority to ANCSA corporations to issue additional shares of stock to Natives for no consideration or for such consideration as the corporation may fix.[a] The purpose of the amendment is to permit ANCSA corporations to issue stock to "new Natives", (children born after enactment of ANCSA), Natives eligible for enrollment in 1971 who failed to enroll, and Native Elders. The authorization to issue stock to "new Natives" and Natives omitted from the original enrollment is designed to remedy the disparity that now exists between Natives who own ANCSA stock and thus benefit from the settlement and individuals who are just as much a Native but who own no ANCSA stock because they were born too late or missed the enrollment deadlines.

The proposal has caused some individuals to raise legal concerns based on constitutional considerations. It is, frankly, difficult to respond to those concerns because the basis of the argument against constitutionality has never been explained. It appears that the argument assumes that the issuance of new stock amounts to a taking of property from existing stockholders.

---

[a] The new authority is found in a proposed amendment to §7(g) of ANCSA. See attached draft legislation at 4, 6-7.

There seems to be little basis for an argument that the authorization to issue "free" stock to Natives constitutes a taking. In the first place, there is no deprivation of any property right of any shareholder. No stock will be taken away, no right to receive dividends will be eliminated, no right to vote will be lost, and there will be no effect on the right to alienate the stock.[1] The effect could be to dilute the value of each share of stock, if the new stock were issued for no consideration, but the value of stock in business corporations is frequently diluted by the issuance of additional stock and such dilution does not raise constitutional issues.

It is true that, in certain circumstances, issuance of new stock for an inadequate consideration may be held unlawful under principles of statutory and common law. Most of these "inadequate consideration" cases have arisen in the context of director self-dealing or acts by a self-interested majority of the shareholders to disadvantage a minority group. In the case of stock issued to new Natives, natives left out of the original enrollment, or Elders, these factors would not be present. Under the proposed amendments any plan for issuing stock to those Natives for nominal or no consideration will have been approved by the shareholders and would not be undertaken to benefit the directors. Indeed the draft legislation includes a provision designed to prohibit self-dealing by management in issuing new stock, *See proposed §7(g)(2)(A), (B) on page 4 of the draft*. It would amount to a self-denial of economic benefits by the Native community for the benefit of other Natives, a laudable goal far different than the situation confronted by courts that have held issuance of shares for less than book value unlawful. *See, e.g., Katzowitz v. Sidler*, 24 N.Y.2d 512, 301 N.Y.S.2d 470, 249 N.E.2d 359 (N.Y. 1969) ("when the issuing price is shown to be markedly below book value in a close corporation and when the remaining shareholder-directors benefit from the issuance, a case for judicial relief has been established."); *Biltmore Motor Corp. v. Rogue*, 291 So.2d 114 (Fla. Dist. Ct. App. 1974) (issuance of stock for less than market value was an abuse of discretion and violation of fiduciary duties where "no ligitimate business purpose for the directors' action was shown.") Because these cases arise in very different circumstances, issuance of stock to new Natives for nominal consideration would not raise the same issue presented in those cases.

---

[1] This proposal is thus different from the proposal to extend the ban on alienation since the power to sell property is a recognized stand in the bundle of protected property rights. The value of a price of property, as distinguished from the rights that attach to the use of that property is not a separately protected legal interest.

Any lingering doubt about the constitutionality of this proposal has been resolved by the Supreme Court. *Gritts v. Fisher*, 224 U.S. 640 (1912), dealt with the Cherokee Nation.

Under legislation passed in 1902 Congress provided that the tribal rolls would be closed on September 1, 1902, and that no Cherokee born after that date would be included in the settlement benefits. Four years later Congress re-opened the rolls and included Cherokees born after 1902. The inclusion of new Cherokees was challenged as depriving enrolled tribal members of vested rights. The Supreme Court agreed that the intent of the 1902 act was to preclude enrollment of Cherokees born later, but held that the original intention did not confer upon the original enrollees any vested right such as would disable Congress from thereafter making provision for admitting newly-born members of the tribe to the allotment and distribution. The Supreme Court explained the result as follows:

> The difficulty with the [argument against constitutionality] is that it treats the act of 1902 as a contract, when 'it is only an act of Congress, and can have greater effect'. Cherokee Intermarriage Cases, 203 U.S. 76, 93, 51 L. ed. 96, 103, 27 Sup. Ct. Rep. 29. It was but an exertion of the administrative control of the government over the tribal property of tribal Indians, and was subject to change by Congress at any time before it was carried into effect and while the tribal relations continued. Stephens v. Cherokee Nation, 174 U.S.445, 488, 43 L. ed. 1041, 1056, 19 Sup. Ct. Rep. 722; Cherokee Nation v. Hitchcock, 187 U.S. 294, 47 L. ed. 183, 23 Sup. Ct. Rep. 115; Wallace v. Adams, 204 U.S. 415, 423, 51 L. ed 547, 551, 27 Sup. Ct. Rep. 363. It is not to be overlooked that those for whose benefit the change was made in 1906 were not strangers to the tribe, but were children born into it while it was still in existence, and while there was still tribal property whereby they could be put on an equal, or an approximately equal, plane with other members.

> The council of the tribe asked that this be done, and we enterain no doubt that Congress, in acceding to the request, was well within its power.

Id. at 648.

The *Gritts* decision has recently been affirmed an applied in a different Indian context. In 1933 Congress passed legislation dealing with Navajo tribal property. Certain public lands in Utah were withdrawn for the benefit of a particular group of Navajos and other Indians residing on that land. In 1968 Congress passed a new law which included all Navajos residing in San Juan County, Utah as beneficiaries of the mineral resources on the reservation. "This statutory change expanded the pool of beneficiaries substantially, and a class action was brought ... seeking ... a declaration that the statute was an unconstitutional taking of property without just compensation." *United States v. Jim,* 409 U.S. 80, 81 (1972). Citing *Gritts* the Supreme Court held that the inclusion of additional Navajos "was well within the power of Congress to alter [the original] distribution scheme." *United States v. Jim, supra,* at 82. In fact the Supreme Court concluded that the constitutionality of the increased participation was so clear that it decided the case in a per curiam opinion without oral argument.

The *Gritts* and *Jim* decisions both rested on the fact that Congress retained jurisdiction over tribal property and could alter the method of distributing that property to individual Indians without violating the Fifth amendment. The Court specifically noted in *Jim* that the subsequent legislation did not "deprive the Navajos of the benefits of mineral deposits on their tribal lands." *United States v. Jim, supra,* at 83. The Court draws a clear distinction between legislation affecting the collective rights of the tribe and legislation affecting the extent to which individual Indians share in tribal property. Both cases thus harmonized Fifth Amendment principles with tribal property concepts. Under established tribal law there is no individual right to own tribal property, but a right to use the property during one's lifetime in common with all other members of the tribe. The Supreme Court decisions are consistent with Indian law to the extent those decisions permit changes in allocation of individual benefits which do not reduce the collective rights of the group.

V. Conclusion

In assessing the constitutionality of the AFN legislation, it is important to remember that Congress is dealing with tribal property, albeit tribal property in a corporate form. The source of the rights under ANCSA is tribal property. The claims extinquished by ANCSA were tribal claims. The lands and money conveyed from the United States in exchange for extinguishment of the claims became tribal property. It is true that the legal entity receiving the property was an Alaska business corporation, but the underlying nature of the property remains tribal, at least until the restraints on alienation of ANCSA stock are lifted. The shares of stock issued to individual Alaska Natives are the historical, moral and -- we submit -- legal equivalent of the tribal enrollment certificates issued to the Creeks, Cherokees and Navajos. The fact that Congress used corporations in ANCSA should not cause a rejection of the established rules of constitutional law dealing with adjustments of tribal settlements to remedy deficiencies and inequities resulting from oversights or changed circumstances.

ANCSA was not the only Indian settlement using corporations. The Indian Reorganization Act of 1934, 25 U.S.C. § 477, authorized creation of tribal corporations to facilitate business transactions. The Ute settlement in 1954, 25 U.S.C. § 677, authorized creation of corporations. *See Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). The 1954 legislation terminating the Paiutes authorized formation of a corporation. 25 U.S.C. § 745. The Menominee termination and restoration involved use of a Wisconsin business corporation. *See Tomow v. Menominee Enterprises, Inc.*, 60 Wis. 2d 1, 208 N.W.2d 824 (1973). The creation of ANCSA corporations did not terminate the tribal nature of Alaska Natives, nor did it turn them overnight into Wall Street investors. The courts have continued to recognize the fundamental truth that ANCSA was, is and will remain an Indian settlement. Hesitations about the constitututtionality constitutionality of the proposed AFN legislation must be scrutinized in light of the legal precedents. Using constitutional law precedents from Indian and non-Indian areas it becomes fairly clear that the AFN proposals are constitutional.

Kenneth C. Bass, III
VENABLE, BAETJER, HOWARD & CIVILETTI

1190c

AFN 1991 LEGISLATION

January 15, 1986

Sec. 1 Congress finds and declares that -

(a) The Alaska Native Claims Settlement Act, was enacted to achieve a fair and just settlement of all claims by Natives and Native groups based on aboriginal land claims in a manner consistent with the real economic and social needs of Alaska Natives, including maximum participation by Native people in decisions which affect their rights and property;

(b) The corporations which the Alaska Native Claims Settlement Act required Alaska Natives to organize to receive the land and money benefits of the settlement represent a form of social organization which is both inconsistent with traditional Native cultural values and frequently ill-adapted to the reality of life in many Native villages;

(c) Although the Congress mandated that the settlement be implemented rapidly and without litigation, the complexity of the land conveyance process and frequent and costly litigation has delayed the implementation of the settlement and significantly diminished its value;

(d) Providing Alaska Natives maximum participation in decisions affecting their rights and property necessitates that the Alaska Native Claims Settlement Act be amended to provide the shareholders of each Native corporation an opportunity to implement the settlement in the manner which they determine is best suited to their particular circumstances and needs, including, but not limited to, an opportunity to decide the manner in which Alaska natives born after December 18, 1971, should participate in the settlement and whether the business corporation is the most appropriate entity to hold legal title to lands conveyed in partial settlement of aboriginal claims;

(e) Providing Alaska Natives maximum participation in decisions affecting their rights and property further necessitates that the Alaska Native Claims Settlement Act be amended to continue restrictions on the transfer of stock of Native corporations until such time as the shareholders of a corporation may vote to terminate such restrictions;

(f) Both the Alaska Native Claims Settlement Act, as amended, and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Commerce Clause to regulate Indian affairs.

Sec. 2 Section 3 of ANCSA [43 U.S.C. §1602] is hereby amended by the addition of the following additional subsections:

(n) "Native common stock" means the stock of a Native Corporation issued pursuant to subsections 7 (g)(1) and (3) of this Act which carries or initially carried with it the rights and restrictions provided for in section 7(h).

(o) "Descendant of a Native" means a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity.

Sec. 3 Section 7(g) of ANCSA [43 U.S.C. §1606(g)] is hereby amended by (i) numbering the existing subsection paragraph (1) and adding the word "Native" after the words "number of shares of" and before the words "common stock" and adding the words "Native common" after the words "one hundred shares of" and before the word "stock" and (ii) adding the following paragraphs:

(2)(A) Notwithstanding any other provision of this Act and in addition to any other existing authority, if authorized by amendment to its articles of incorporation after the effective date of this act, any Regional Corporation may issue such shares of stock divided into such classes and series within classes, with such preferences, limitations and relative rights, including, without limitation, dividend rights, voting rights, liquidation preferences, and rights to share in distributions made to stockholders under subsections (j) and (m) of this section, as may be provided in its articles of incorporation or an amendment thereto. Notwithstanding any provision of state or other federal law, such shares may be subject to alienability restrictions not in excess of the restrictions provided for in paragraph (1) of section 7(h), as provided in the articles of incorporation or an amendment thereto. Notwithstanding any provision of state or other federal law, issuance of one or more classes of such stock may be restricted to (i) Natives who have reached the age of sixty-five or (ii) any other identifiable group of Natives, provided, that such group is defined in terms of general applicability, and is not in any way defined by reference to a place of residence, family or position as an officer, director, employee of a Native Corporation or shareholder of a Native Corporation other than the issuing Corporation. Any such shares of stock may be issued to holders of Native common stock for no consideration, or to holders of Native common stock or others for such consideration as may be permitted by law.

(B) Any amendment to the articles of incorporation of a Regional Corporation which permits the issuance of classes and series of stock other than Native common stock shall specify the maximum number of shares that may be issued in any such class or series, and the maximum number of votes that may be held by shares of such class or series. During any period in which the restrictions on alienation of Native common stock are in effect no stock may be issued under this section to a group of individuals composed only of employees, officers or directors of the Native Corporation. If such amendment permits the issuance of classes or series of stock which, when issued, singly or in combination, may cause the outstanding shares of

Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) to represent less than a majority of the voting power of all stock in the Native Corporation, the stockholders of such corporation shall be expressly so advised in the proxy statement or other informational material distributed in advance of their vote upon the amendment. In no event may shares of stock other than Native common stock be issued more than thirteen months after the date of a stockholder vote authorizing the issuance of such stock if, upon the issuance of such stock and as a result of such issuance, the outstanding shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) will represent less than a majority of the voting power of all stock in the Regional Corporation: Provided, That the restriction set forth in this sentence shall be of no further force or effect if shares of stock have been lawfully issued pursuant to this paragraph which have caused the shares of Native common stock bearing the restrictions on alienation provided for in paragraph (1) of section 7(h) to represent less than a majority of the voting power of all stock in the Regional Corporation or if the restrictions upon alienation of Native common stock provided for in paragraph (1) of section 7(h) have expired or been terminated by vote of the stockholders.

(C) Notwithstanding the issuance of additional shares of stock or a new class of stock pursuant to this paragraph, the Regional Corporation shall continue to apply the ratio last computed under subsection (m) before the effective date of this Act for purposes of distributing funds under subsection (j) and (m). If shares of different classes or series have been issued pursuant to this paragraph to the class of stockholders who, prior to the effective date of this Act were the class of stockholders holding non-village stock ("non-village stockholders"), distributions payable under subsections (j) and (m) shall be made with respect to such classes or series in accordance with the rights, if any, of each class or series to share in such distributions as provided in the articles of incorporation or any amendment thereto, and, if so provided in the articles of incorporation or an amendment thereto, the right to share in such distributions may be established as a right or security separate from any other shares issued to such non-village stockholders. Common stock issued pursuant to this subsection which carries the same rights and restrictions provided for in Section 7(h) or which is issued in substitution for Native common stock shall be deemed to be Native common stock as long as all such rights and restrictions are in effect with respect thereto.

(3) Notwithstanding any provision of federal or state law to the contrary and in addition to any other existing authority, if authorized by an amendment to the articles of incorporation, a Regional Corporation may issue up to one hundred shares of additional Native common stock to:

(A) Natives born after December 18, 1971;

(B) Natives who have attained the age of sixty-five; and

(C) Natives who were eligible for enrollment pursuant to section 5 but who were not so enrolled.

for no consideration or for such consideration and upon such terms and conditions as may be specified in the amendment to the articles of incorporation or in the resolution or resolutions providing for the issuance of such stock adopted by the board of directors pursuant to authority expressly vested in it by the articles of incorporation: Provided, That the issuance of additional shares of Native common stock or other stock pursuant to this subsection shall have no effect on the division and distribution of revenues pursuant to subsection (i) of this section.

Sec. 4 Section 7(h) of ANCSA [43 U.S.C. §1606(h)] is further amended to read as follows:

(1) Except as otherwise provided in paragraphs (3) and (4) of this subsection, Native common stock of a Regional Corporation issued pursuant to subsections (g)(1) and (3) of this section shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws

of the State of Alaska, except that until the termination of the restrictions by the shareholders under paragraph (2) of this subsection such Native common stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto, may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, treated as an asset in a bankruptcy estate, or otherwise alienated, whether such Native common stock is held by Natives or descendants of Natives or by persons who are neither Natives nor descendants of Natives: Provided, That such limitation shall not apply to transfers of Native common stock if and to the extent that any such transfers are made to Natives or to descendants of Natives pursuant to a court decree of separation, divorce or child support or by a stockholder who is a member of a professional organization, association, or board which limits the ability of that stockholder to practice his profession because of holding stock issued under this chapter.

(2) The restrictions on the alienation of Native common stock described in paragraph (1) shall continue indefinitely until such time as the shareholders of a Regional Corporation vote to terminate such restrictions. A vote on the question of whether to terminate restrictions on the alienation of Native common stock shall be conducted pursuant to the following procedure:

(A) On or before December 18, 1991, or at any time thereafter, the shareholders of a Regional Corporation may vote whether to terminate the restrictions on alienation described in paragraph (1). In conducting the vote, the board of directors of the Regional Corporation shall have the option of seeking shareholder approval either of a resolution determining that such restrictions be continued or of a resolution that such restrictions shall be terminated. Continuation of the restrictions on alienation for such period of time as the shareholders may approve is hereby authorized.

(B) If the shareholders reject a resolution that the restrictions on alienation be continued, such restrictions shall be terminated in the manner described in subparagraph (D). In the event that the shareholders reject a resolution that the restrictions be terminated, such restrictions shall be extended for an indefinite period, subject to the provisions of subparagraph (C).

(C) A resolution adopted pursuant to this paragraph shall be considered to be an amendment to the Articles of Incorporation of the Regional Corporation for purposes of paragraph (6) of this subsection. Adoption of a resolution to continue the restrictions on alienation or rejection of a resolution to terminate such restrictions shall not preclude the shareholders of the Regional Corporation from later approving a resolution to terminate the restrictions in accordance with the bylaws of the corporation.

(D) A resolution to terminate restrictions on the alienation of Native common stock shall state the date or describe the specific events upon which the restrictions will terminate if the resolution is approved. If a resolution to continue such restrictions is defeated, the shareholders shall also adopt a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate. If a resolution which establishes the date or describes the specific events upon which the restrictions shall terminate is not approved, the restrictions shall terminate one year from the date of the vote disapproving the resolution to continue such restrictions. On the date of termination all Native common stock previously issued shall be deemed cancelled, and shares of stock of the appropriate class shall be issued to each stockholder share for share, subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or in agreements between the corporation and individual shareholders.

(3) Upon the death of any holder of Native common stock, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy, except that in the event the deceased stockholder fails to dispose of all of his Native common stock by will to a Native or descendant of a Native and if the stockholder has no heirs under applicable laws of intestacy who are Natives or descendants of Natives, such stock

shall escheat to the Regional Corporation: Provided, That this paragraph shall not restrict the devise or intestate disposition of any shares of Native common stock of a Regional Corporation whose shareholders have amended the articles of incorporation to remove the limitation on alienation of such stock otherwise imposed by paragraph (1) of this subsection.

(4) Notwithstanding any other provision of this section, the Regional Corporation may, if authorized by an amendment to its articles of incorporation, purchase, and for that purpose its shareholders may sell, any or all shares of its Native common stock then issued and outstanding with payment out of unreserved or unrestricted earned surplus of the corporation, or, if there is no earned surplus, out of its net profits for the fiscal year in which the purchase is being made and the preceding fiscal year except when the corporation is unable to pay its debts as they become due in the usual course of business. Shares of stock purchased pursuant to this paragraph shall become nonvoting treasury stock, or may be cancelled by the Regional Corporation in accordance with law.

(5) The lapse of the right to vote in the holder of Native common stock upon a transfer to him by inheritance or otherwise prior to the effective date of this Act may be restored by the adoption of an amendment to the articles of incorporaton to such effect: Provided, That such voting rights may be restored only with respect to shares of Native common stock held by a Native or a descendant of a Native.

(6) Notwithstanding any provision of Alaska law --

(A)(i) Any amendment to the articles of incorporation of a Regional Corporation authorized by this subsection, subsection (g) of this section, a transfer of assets made pursuant to section 7a, and a resolution described in subparagraph (B) of this paragraph shall be approved if at least 51 per centum of the outstanding shares of Native common stock entitled to be voted are voted on the resolution to adopt such amendment or on the resolution provided for in subparagraph (B) of this paragraph, and such resolution receives the affirmative vote of at least 50 per centum plus one of the shares voted: Provided, That the stockholders may require a minimum vote of more than 51 per centum of the outstanding shares of Native common stock entitled to be voted or an affirmative vote greater than 50 per centum of the shares voted, or both, to approve any such resolution:

(ii) any other amendment to the articles of incorporation not specified in clause (i) of this subparagraph shall be approved in accordance with the articles of incorporation, by-laws or applicable law.

(B) If the result of a shareholder vote under paragraph (2) of this subsection is the extension of restrictions against alienation, a stockholder who voted against the extension or in favor of the termination of restrictions, as the case may be, may demand and receive payment from the corporation for all of his or her shares but only if contemporaneously with the vote the shareholders of the Regional Corporation adopt a resolution expressly providing for such right. The procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this paragraph.

(C) The stockholders of a Regional Corporation who adopt a resolution pursuant to subparagraph (B) of this paragraph may also provide in such resolution that the Native common stock shall be valued only as restricted stock (having the same restrictions for the same period then applicable to the stock) or that the value of the land or any interest therein received by the Regional Corporation pursuant to this chapter, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the Regional Corporation.

(7) If the result of a shareholder vote under paragraph (2) of this section is the removal of restrictions on alienation otherwise imposed by paragraph (1) of this subsection, the Regional Corporation may nevertheless, prior to the termination of such restrictions, impose any restrictions upon Native common stock permitted under applicable law as well as --

(A) the denial of voting rights to any holder of Native common stock who is not a Native or a descendant of a Native, and

(B) the granting to the corporation, or to the corporation and a stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's Native common stock (whether issued before or after the adoption of the restriction) prior to the sale or transfer of such stock (other than a transfer by inheritance) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge or other encumbrance.

Sec 5. ANCSA is further amended by adding a new section to read as follows:

SEC. 7a. (a)(1) A Native corporation may convey some or all of its assets, including title to the surface and/or subsurface estate of land or any interest therein, to a qualified transferee entity for no consideration or for such consideration as its shareholders may approve.

(2) A qualified transferee entity is an entity organized pursuant to or recognized by state or federal law which--

(A) has a membership composed of persons whose interest in the entity is not transferable:

(B) provides membership in the entity for every person who holds Native common stock in the Native Corporation making the transfer of assets on the day before the date of such transfer, which membership shall terminate at such stockholder's death; and

(C) In addition to the persons described in paragraph (B) of this subsection, accepts as new members only Natives and descendants of natives.

(3) in addition to the authority and powers vested in such entity by state or federal law, a qualified transferee entity is authorized to --

(A) to limit its membership to Natives and descendants of Natives, except as provided in subsection (2)(B) of this subsection, and

(B) distribute cash or other assets to its members, except that such entity shall not convey fee title to land, or any interest therein, except to the extent authorized or required by sections 14(c) and 21(j) of this Act.

(b) A conveyance of assets pursuant to this section must be approved by a prior vote of the shareholders and shall be subject to such terms and conditions as the shareholders may approve. Shareholders shall be provided not less than fifty (50) nor more than sixty (60) days notice prior to such vote.

(c) Section 21(d) of this Act shall continue to apply to land, or any interest therein, conveyed by a Native Corporation to a qualified transferee entity pursuant to this section.

(d)(1) An asset subject to section 7(i) of this Act conveyed pursuant to this section shall remain subject to section 7(i) to the same extent such asset would have been subject if the conveyance had not occurred.

(2) A Regional Corporation shall not convey assets subject to section 7(i) of this Act pursuant to this section to more than one qualified transferee entity. Prior to receiving a conveyance of of an asset subject to section 7(i), a qualified transferee entity shall agree in writing to be bound by the provisions of the agreement dated June 29, 1982, among and between the parties to The Aleut Corp., et al. v. Artic Slope Regional Corp, et al., (Civ. Act. A75-53 D. Ak.) and to waive its sovereign immunity, if any, with respect to any claims arising under section 7(i) or this subsection. The Regional Corporation, or in the case of its dissolution another single entity designated by its shareholders or the United States District Court, as appropriate, shall be responsible for administering the provisions of both section 7(i) and the aforementioned agreement dated June 29, 1982, with respect to all assets subject to section 7(i) conveyed by such corporation pursuant to this section.

(3) Subsequent to the conveyance of an asset subject to section 7(i) by a Regional Corporation, such asset shall continue as security for the payment by such Corporation, or its successor entity, of all revenues which the Corporation is obligated to distribute to other Regional Corporations pursuant to section 7(i).

(e)(1) If a shareholder vote described in subsection (b) approves a conveyance by a Native corporation of an asset pursuant to this section, a stockholder who voted against the conveyance, may demand and receive payment from the corporation for all of his or her shares but only if contemporaneously with the vote the shareholders of the native Corporation adopt a resolution expressly providing for such right. The procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this paragraph.

(2) A resolution described in paragraph (1) of this subsection may also provide that the Native common stock of such Native corporation shall be valued only as restricted stock (having the same restrictions for the same period then applicable to the stock) or that the value of the land, or any interest therein, received by the Regional Corporation purusant to this Act, which is committed by the corporation to native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the Regional Corporation.

Sec. 6 ANCSA is further amended by adding a new section to read as follows:

SEC. 7b. Nothing in this Act shall be construed as diminishing or in any way affecting the scope of any governmental authority of a federally recognized tribe, traditional Native council or Native council organized pursuant to the Indian Reorganization Act, as amended, or any right, privilege or immunity of Alaska Natives as Native Americans in their relationship with the Government of the United States.

Sec. 7. Section 8(c) of ANCSA [43 U.S.C. §1607(c)] is amended to read as follows:

(1) The provisions of sections 7(g), (h) and (o) of this Act relating to Regional Corporations shall apply in all respects to Village Corporations, Urban Corporations and Native Groups; except that (A) audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate; and (B) subject to the provisions of paragraph (2) of this subsection, restrictions on the alienation of Native common stock of such corporations, inchoate rights thereto and any dividends paid or distributions made with respect thereto shall continue after December 18, 1991.

(2) The restrictions on alienation of Native common stock of Village Corporations, Urban Corporations and incorporated Native groups may be removed by the adoption of an amendment to the articles of incorporation to such effect:

Provided, That a shareholder vote on an amendment calling for the removal of such restrictions may be held once before December 18, 1991, and, if such amendment shall not be adopted, subsequent votes on a like amendment may be held not more frequently than at annual intervals after December 18, 1991: Provided further, That stockholder votes to amend the articles of incorporation of a Native corporation pursuant to this paragraph shall be held in accordance with the provisions of subsections 7(h)(2) and 6).

Sec. 8 Section 14 of ANCSA [43 U.S.C. §1613] is amended to add the following new paragraph:

(i) Authorization for conveyance of subsurface to Village entities.

(1) A Regional Corporation may convey any subsurface estate owned by such corporation to a village entity which acquired the surface estate pursuant to this Act.

(2) Nothwithstanding any conveyance under this paragraph the Regional Corporation shall receive the 30% of the revenues from the development of the subsurface estate it would have retained had there been no such conveyance.

(3) Any conveyance under this paragraph shall be subject to the provisions of subsections 7a(b)-(e) as if the village entity were a qualified transferee entity. The document or documents effecting such conveyance shall be recorded by the Regional Corporation, together with copies of subsections 7a(b)-(e) and this subsection, in the land records of the appropriate recording district.

(4) The village entity to which any subsurface estate is conveyed pursuant to this subsection may not convey or otherwise transfer all or any part of such subsurface estate to any other entity without the express consent of the transferor Regional Corporation.

Sec. 9 Section 21(d)(1) of ANCSA [43 U.S.C. §1620(d)(1)] is amended to read as follows:

All land and interests therein conveyed, pursuant to this Act, to a Native individual, Native Group, Village or Regional Corporation or corporation established pursuant to section 14(h)(3) of this Act shall, so long as such land and interests therein are not developed or leased to third parties or are used solely for the purposes of exploration, be entitled from the date of their conveyance to immunity from --

(A) adverse possession and similar claims based upon legal theories of estoppel;

(B) real property taxes by the United States, the State of Alaska, or any political subdivision of the State;

(C) judgment resulting from any claim based upon the laws of bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally; and

(D) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native Group or any officer, director or stockholder of any such Corporation or Group:

Land to which this paragraph applies shall not be considered developed solely as a result of the construction, installation or placement upon such land of any structure, fixture, device or other improvement intended to enable, assist or otherwise further the subsistence or other customary or traditional uses of such land: Provided further, That the immunities provided for in this paragraph shall be in addition to those immunities or other benefits to which such land or interests therein may be entitled under the Alaska National Interest Land Conservation Act: and Provided further, That the immunities provided for in this paragraph shall not apply to any judgment in any action at law or equity or to any arbitration award arising out of any claim regarding revenue sharing under section 7(i).

Sec. 10 Subsection 21(f) of ANCSA [43 U.S.C. §1620(f)] is amended by deleting "Until January 1, 1992," and replacing such language with "Until such time as the limitation upon alienation of Native common stock has been removed pursuant to section 1606(h)(2) of this title," Sec. 11 Section 28 of ANCSA [43 U.S.C. §1625] is amended by replacing the final clause of the first sentence, "through December 31, 1991," with the following:

...through the earlier of the date on which the corporation (1) issues any shares of stock which will not be issued solely to Natives or descendants of Natives or to entities established for the sole benefit of Natives or descendants of Natives or (ii) removes the limitation on alienation of Native common stock as provided for in section 7(h)(2) of this Act.

After the next sentence, add the following:

For the purpose of determining the applicability of the registration requirements after such date of the Securities Exchange Act of 1934 (48 Stat. 74), as amended, holders of Native common stock shall be excluded from the calculation of the number of shareholders or record pursuant to section 12(g) thereof. The provisions of the Investment Company Act of 1940 shall not, in any event, apply to any corporation organized pursuant to this chapter until January 1, 2001, at the earliest.

Sec. 12 Section 10 of ANCSA [43 U.S.C. §1611] is amended by adding the following new subsection:

(c) The United States District Court for the District of Alaska is hereby vested with exclusive original jurisdiction over any action challenging the constitutionality of sections 7a, 7(g), 7(h), 8(c) and 8(i) of this Act. Such action shall be heard and determined by court of three judges as provided in 28 U.S.C. §2284 with a direct appeal from any final judgment to the United States Supreme Court. If the United States District Court should determine that any of the aforementioned sections violate the Fifth Amendment to the United States Constitution, in fashioning appropriate relief, the Court shall not enter a money judgment against the United States, it being the express intention and direction of Congress that in no circumstances shall the enactment of this Act result in any liability on the United States.

Sec. 14 Section 27 of ANCSA [43 U.S.C. § 1628] is amended to read as follows:

The provisions of this Act, as amended are severable. If any provision, of the Act is determined by a Court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision.

0719j

Senator MURKOWSKI. Thank you, Ms. Leask.

Mr. John Shievely, did you have a statement?

[No response.]

Senator MURKOWSKI. I have a few questions.

First of all, Commissioner Notti, there has been an awful lot of concern in Alaska about the issue of these provisions which may or may not foster some degree of sovereignty. Since the State has the authority to manage fish and game, the authority to tax, provide services to the villages which would ultimately be affected.

I am curious to know how comfortable the State is—and I assume the State's attorney general has addressed the language—but I am concerned with how comfortable you and the State and the Governor and those involved are that this bill would not promote Indian country in Alaska.

Mr. NOTTI. There have been some discussions amongst us with the attorney general.

Senator MURKOWSKI. Would you pull the microphone up a little bit.

Mr. NOTTI. There have been some discussions about that issue both with the attorney general and Mr. Katz. And since Mr. Katz is an attorney, I will let him answer that.

Mr. KATZ. Let me say by way of preamble that our policy, with respect to sovereignty, is very similar to the policy that you enunciated in your introductory statement. We do not see this as sovereignty legislation. The key elements of sovereignty legislation are not in it.

We have sought throughout the legislative process to maintain the status quo—that is, that this legislation would not enlarge, diminish, or in any way affect a claim of native sovereignty if one might have existed prior to the enactment of the legislation.

We have worked very hard in the House process to improve and strengthen section 7(c) of the legislation, the hold harmless provision as it relates to native sovereignty, and it is the judgment of the attorney general's office and my office that that subsection now accomplishes the purpose that we have indicated as a matter of policy.

We would have no objection to the insertion in the Senate legislation of specific disclaimers in the subsections that you mentioned to just make it crystal clear that this is not sovereignty legislation but even in the absence of that incorporation, we think that the general hold harmless provision would ensure that native sovereignty is kept separate from this legislation.

Senator MURKOWSKI. So it is fair to say that you are satisfied that the language in the bill would not promote Indian country, so to speak. And when you say you have no objection to disclaimers, does that mean that you basically support the so-called disclaimers which perhaps I outlined in my opening statement that has been addressed earlier today?

Mr. KATZ. I think we would. It is my understanding that they very closely approximate the general disclaimer which already exists in the bill and that their purpose is to make it crystal clear that the policy which is stated in that general subsection applies in every instance in the legislation when even a scintilla of a claim relating to native sovereignty could apply.

From that point of view, we would have no trouble with the insertions that you suggest.

Senator MURKOWSKI. Another question, and I would again address this to Mr. Notti, and if you care to have Mr. Katz answer it, why that is most appropriate. Do you feel there is anything in this legislation which would affect the State's authority or ability to manage its fish and game resources?

Mr. NOTTI. We do not see any diminishing of the State's rights or responsibilities in governing all of the issues that are addressed in the bill.

Senator MURKOWSKI. I am specifically referring in this case to fish and game, and of course what I am leading up to is the question which has been enunciated by several people concerning the potential routing of the corporation to change its structure from a corporation to an association and thereby achieving a state where it theoretically could manage its fish and game.

And I gather from your statement that—and I am not quite sure definitively, so I do not want to make a suggestion—what we are doing is we are allowing the transfer of assets to other entities, specifically, and in that state there is conceivably an opportunity to manage fish and game, sovereignty, and Indian land and various other things.

Now we have attempted to address that, as Mr. Katz pointed out, through disclaimers. But I guess my question is without the disclaimers, do you feel there is anything in the legislation, the current bill, that would affect the State's ability to manage fish and game resources in Alaska?

Mr. NOTTI. A short answer would be no, we do not see anything like that. But Mr. Katz might want to expand.

Senator MURKOWSKI. Would you support the disclaimers that we have put in supporting that?

Mr. NOTTI. Yes, sir, we do.

Senator MURKOWSKI. Mr. Katz.

Mr. KATZ. Yes, sir. We looked very carefully at the legislation from that point of view. Clearly no claims to fish and game management can arise from any of the sections dealing with the so-called 1991 issues, the corporate amendments.

Therefore, the only other even possible source would be the subsections that you alluded to in your question. We think that the attorney general's position in a number of situations has been that with the exception of Metlakatla, there are no Indian Reservations in Alaska that, with very limited exceptions, there is no Indian country. And I think that were he here, he would say that even in the absence of the disclaimer sections, the arguments that he has made in various judicial situations—that is, that the State's fish and game authority remains unimpaired—would exist as part of the status quo.

But just to make deadly certain that we were not expanding any claims with respect to fish and game management, we have previously recommended and supported the inclusion of appropriate disclaimer language.

Senator MURKOWSKI. We are proposing in this legislation a substantial change in the taxation issue. Under current law, all land is taxable 20 years after it is conveyed. What we are contemplating is changing that and indicating that it will be taxable if it produces revenue, which leaves a whole broad area of definitions.

And my question to you is, and I would address this to Commissioner Notti, with regard to the definition of developed or undeveloped, do you support say the State of Alaska's definition on what constitutes developed or undeveloped land for tax purposes? We have not really heard from the State government on this issue to the extent that we are able to get a position so that we can develop legislation to address what constitutes development.

And we have had obviously a number of hearings. We have had one mayor, the mayor of Anchorage, testify and propose a particular solution. We have addressed the matter to the Alaska League of Cities, and they have indicated an interest and intent to have input legislation.

But I think it is very necessary that the State of Alaska address this and the State administration address it from the standpoint of developing workable definitions. I wonder if you care to comment, Commissioner Notti.

Mr. NOTTI. Well just briefly, the only taxing entities today are the boroughs and cities. The State of Alaska does not have a property tax. A quick definition would be that if there is no cash generated by the land, if that was a criteria for development, then the State would not object to it being nontaxable.

Senator MURKOWSKI. Well, let us go down to the Copper River country where I think to dip netting there is some Indian land which is private land, costs $5 or $10.

Should that land be taxable if indeed there is an appropriate taxable entity in the Cordova Copper River area?

Mr. NOTTI. Well, I would not think that would be considered developed land. However, it is a technical definition. I am sure it will be argued out at some point. I think John is chaffing to say something.

Mr. KATZ. I guess all I would say to supplement that is that it is very difficult in Federal law to envision every situation that might raise the issue of whether land remains undeveloped and is therefore exempt from taxation or has become developed.

I think the essential distinction that you referred to in your opening remarks is the same one that we see and that is if the land remains dormant—that is, there is no revenue flow—then it should not be taxed. That is consistent in our judgment with the original purpose of the Settlement Act where we think Congress granted an exemption from real property taxes to give Native corporations the chance to develop and grow and develop a tax flow.

With respect to the specific question you asked, I think it is just hard to say in the abstract without knowing an awful lot more about the situation involved.

Senator MURKOWSKI. Well, we would appeal for obvious input on this issue because it is going to have to be addressed as we proceed. And we do have some cases where there is regional corporation land, in boroughs and the land currently is not taxed. For the most part, it is not improved; in fact, I do not think it is improved.

We have it in the Anchorage borough, we have it in the Gold Belt, Juneau. I think we have some in Fairbanks as well. And from the standpoint of trying to avoid extended litigation, I think it is important that we address as much as possible congressional intent language so that we do not leave these questions open to extended litigation.

Mr. NOTTI. Mr. Chairman, I would be glad if you would like, to have the Attorney General develop a policy for the State and submit some written testimony on this.[1]

Senator MURKOWSKI. I would encourage that because we are going to have to adopt some definitions. And if the definition is by consensus, why then theoretically they will reduce the litigation aspects.

I have a question for Ms. Leask. All of the options authorized in the legislation allow the dissenter's rights. We have heard from Mr. Horn. But except for the option of the issuance of new Native stock, can you explain for the record why there is no provision for dissenter's rights on the option of Native stock for new Natives that would be enrolled as a result of the 1971 cutoff?

Ms. LEASK. I would defer to John for that.

Mr. SHIVELY. Senator, my name is John Shively, for the record. I work for the Alaska Federation of Natives. There was a great debate about dissenter's rights in general at the AFN conventions that dealt with this issue. A number of corporations did not see the need for any dissenter's rights because they felt that the purpose of this legislation was to protect Native lands and Native corporation for Native ownership and that you did not want to destroy what the majority had to give the minority something.

So the compromise was that dissenter's rights would apply in two situations, transfer of assets and voting on restrictions, because I felt those were the two major pieces of the legislation.

Senator MURKOWSKI. Well, of course the difficulty, as expressed by Mr. Horn, is what liability the Federal Government might be subjected to as a result of litigation that would result from a minority shareholder appealing to the court and the litigation favoring the individual, the minority, against the Federal Government.

And I am sure you would appreciate and understand the extent of that concern. And I guess the question is, as we address the issue of dissenter's rights, unless the Department of the Interior can satisfy itself to the extent of the liability, we have the position of the AFN made up by a majority of your members more or less dismissing this concern.

But if indeed there is a real concern, it would appear that we are somewhat at loggerheads on the issue. When this legislation moves for markup, and if the Department of the Interior is still of the position that there is substantial liability to the Government on behalf of the dissenter's rights, my colleagues are going to be reluctant to support legislation that is going to leave the Federal Government open to the potential of substantial liability.

How do you suggest we address this dilemma?

Mr. SHIVELY. Of course, we are going to meet with the Secretary and, again, with Mr. Horn.

My understanding of Mr. Horn's testimony was not that they felt that there was substantial liability, as we do have a section in the bill that says that if there are constitutional problems, then there is no financial liability to the Government, and we have not heard the Government say that that is an inoperative section or is not a satisfactory section. And I think Bill Horn suggested that they had some policy problems here.

---

[1] The Attorney General's policy has not been received by the subcommittee.

So in terms of liability, if that is the main problem, I think we can deal with that issue.

Senator MURKOWSKI. I am just curious. I am going to pursue that a little further because can you basically waive liability to the Federal Government unless you have unanimous consent by the members of the shareholders? Obviously this is a legal question and perhaps it is one that can only be determined by the courts, but this I gather has been a consistent concern expressed by some within the Department of the Interior at least.

Mr. SHIVELY. That is right. Our feeling is that Congress has other avenues including telling Congress what they did was incorrect and to go back and try again. They do not have to access liability against the Government. And that is the purpose of the section that we presently have in the legislation.

Senator MURKOWSKI. Well, that is true up to a point of the fifth amendment. But if somebody would appeal on the basis of the fifth amendment and their constitutional rights, why then that is something else again.

Mr. SHIVELY. Well, that's a great legal debate. But of course ANCSA has already been determined by the courts to be Indian legislation. Congress has extra authority in Indian legislation cases, and we think that overrides and has consistently in the eyes of the Supreme Court overridden the fifth amendment taking-consequences.

Senator MURKOWSKI. The only problem we run into here is that we are kind of plowing new ground inasmuch as we are dealing with corporations, and corporation law is already, in effect, the law of the internal structure and whether one can assume that because it is Indian corporations, it falls under a different category. And I obviously do not know, but I think that is something that we should certainly have appropriate opinions on.

Mr. SHIVELY. Well, I think if you look at our constitutional memorandum which Ms. Leask submitted for the record, you will see some of the arguments spelled out in there as to why we do not think it is a problem.

Senator MURKOWSKI. Well, I guess that is what makes things interesting when there are differences of opinion. But it is a concern of the committee, and I did want to make sure that we explored it on the record because it is an area that we are going to have to resolve as we proceed.

Ms. Leask, in the legislation there are I think six different voting standards. All of the options in the legislation—issuance of new Native stock, transfer of assets, and so forth—all have a very important impact on the shareholder.

Do you support basically making these uniform, across the board; and if so, what would that voting standard be?

Ms. LEASK. Mr. Chairman, as it is written right now, we do support the higher voting requirement for the alienation of stock, for the removal of restrictions on stock, because we feel that that is the whole heart of the proposed amendments.

Senator **Murkowski**. I think we have exhausted our questions. I want to thank you for being with us this morning, Ms. Leask, Commissioner Notti, John Katz and John Shively. I would wish you good day and hope you could join us this afternoon.

I might indicate that for the record we have had come in this morning a letter from a Walter J. Hickle, which will be entered into the record concerning his position on 1991.

[The letter of Mr. Hickle follows:]

August 4, 1986

Senator Malcolm Wallop, Chairman
Public Lands, Reserved Water and Resource Conservation Subcommittee
United States Senate
Washington , D.C. 20510

Regarding: S 2065 and HR 4162 (Alaska Native Claims Settlement
Act Amendments of 1986)

REQUEST TO ENTER A STATEMENT INTO THE RECORD:

Dear Senator Wallop,

I have been asked by several members of the Alaska Federation of Natives to convey to you my views on the 1991 amendments.

I am pleased to do so and request that these remarks be entered into the record of the hearing today.

As you are aware, as Governor and as Secretary of the Interior, I worked with many of the current Native leaders in forging a fair and equitable Alaska Native Claims Settlement Act.

As several of these leaders reminded me recently, the first bills proposed to settle Alaska's Native claims consisted of an offer of $185 million. As Secretary of the Interior, I introduced legislation for $500 million - plus a large land entitlement.

This action, along with other issues we have solved together through the years are not forgotten, so while there is now a difference of opinion on approach to solving some of the issues of 1991, there is no difference of opinion as to how important these issues are to all of us.

I am in total agreement with the Native leadership that the 1991 issues are of critical importance to the future of Alaska.

It would be a disaster for Alaska, in every sense, if the Native land base was lost or set aside in some manner that took self-determination away from the owners.

Interestingly enough, this was the concern of all Alaskans at the time of our Statehood Act. Right after Statehood, E.L. Bartlett warned the new legislature that the two dangers threatening Alaska's future were that outside interests would exploit Alaska's Statehood lands or that they would tie these lands up in such a way that they could not be used for the benefit of Alaskans.

These are now the concerns of Alaska's Native people regarding their Settlement Act lands.

I joined with seven other Alaskan Republican gubernatorial candidates -- Joe Hayes, Arliss Sturgulewski, Bob Richards, Dick Randolph, Ron Somerville, and Bob McCrane -- in expresssing our hope that the 1991 issues are resolved in such a way that all Alaskans can look back on their resolution with pride.

I have always believed in strong local control. I will repeat the public comment I made concerning the 1991 amendments months before I announced my candidacy: I believe our state Constitution has every mechanism we need to solve the rural problems of Alaska. What all Alaskans, including Native Alaskans, want and should have is the ability to determine their own future -- local control -- but the establishment of Indian reservations or sovereign villages is not the answer to local control. It only forces the decisions to be made in Washington D.C., rather than here in Alaska.

If we can't solve rural Alaska's problems in this state, we don't deserve to be a state.

Within this framework of thinking, I make the following specific remarks:

I do not oppose those sections of the proposed 1991 legislation that clearly requires federal action to amend -- such a consideration of after-borns and other internal matters.

The three areas that concern me the most are as follows:

1. The sections in both the House and Senate legislation proposing to allow the transfer of assets to a federal entity. This sets up a separate system of local control by the federal government under a federal agenda instead of local control by the state government under an Alaskan agenda.

   - I recommend that transfer of assets should only be allowed to entities recognized under state law.

2. The inclusion of "Disclaimer: Tribal Government," as worded in in both the House and Senate bills implies that the question of sovereignty is still open.

   - The disclaimer should clearly state that this legislation does not intend to confer powers of self government outside the jurisdiction of the State of Alaska.

3. The section providing real property interest immunities under federal jurisdiction for undeveloped land. These protections should be provided under state law and administered under state jurisdiction so land owners have direct access to decisions affecting their heritage.

I support protection for undeveloped land. I supported the concept of a land bank in the ANILCA legislation.

*The federal government's management of that concept has convinced me that any and all immunities for Native land in Alaska will only work under state control.

I thank you for the opportunity to convey my views.

Sincerely,

Walter J Hickel

Walter J. Hickel
Former Governor, State of Alaska

Senator **Murkowski**. Our next panel will consist of Mr. William C. Williams, president, Tanana Chiefs; Mr. Mitch Demientieff, vice president, Tanana Chiefs; Mr. Michael J. Walleri, attorney for Tanana Chiefs; and Chief Andrew Isaac, traditional chief, Tanana Chiefs. And that will constitute panel four.

And we have only got another 8 or 10 more to go on this first bill.

Would you please proceed in any manner in which you wish.

STATEMENT OF WILLIAM C. WILLIAMS, PRESIDENT, TANANA CHIEFS CONFERENCE, INC.

Mr. **Williams**. Thank you, Mr. Murkowski. Chief Andrew extends his sorrow that he is not able to attend this hearing because he is not feeling too well and he was afraid of the heat back here.

Senator **Murkowski**. I had the pleasure of visiting him on the Tanana River not so long ago.

Mr. **Williams**. I have submitted formal testimony. But in light of the preceding testimony from Interior and what I am hearing here, I think I have to do something a little different than my formal testimony.

Senator **Murkowski**. Your entire statement will be entered into the record.

Mr. **Williams**. I think we have got to outline a little history of the act and what has gone before so some of the misconceptions that I have been hearing hopefully can be resolved and straightened out.

We have to go back all the way to the purchase of our State or our so-called purchase from Russia, a disclaimer in there that there would be a settlement. Along came the territory and everything else, and our great State seemed to survive all of those challenges and those impacts.

We have a very large State; most of the villages saw very little of the impact of encroachment by non-Natives—real no concern. There were some land claims efforts started in the southeast where they felt encroachment and during the railroad construction my own village, Nenana, started discussion with the Federal Government with regards to impacts of encroachment on Native lands.

Along came statehood. Still no real substantive talks on settlement that was spoken of in the sales agreement from Russia to the United States. The State was given 100-some million acres of land to select. The Native community was getting quite concerned because the State was being divided, fenced off, and ownership was being established of something we considered ours. And still our legitimate claims had not been settled.

Finally, there was something of unique value that forced everybody to the bargaining table. That was Prudhoe Bay. Billions of dollars in revenue being generated, meeting a very critical national need was found in Prudhoe Bay on Native lands, still unsettled Native lands.

The only thing that ever forced the U.S. Government and the Natives to the table together was Prudhoe Bay. The oil companies went to get funding for the pipeline. The bankers said where is clear title? The Government nor the State nor anybody else could produce clear title to that rightaway for that pipeline. All land transactions in the State of Alaska were frozen because of it.

Still today we hear things that are happening right here in this room that were not talked about during that what I call mutual blackmail or negotiations during the Land Claims Settlement Act. We did not want to stand in the way of the national interest in accessing that oil.

So we sat down. We negotiated what we thought was a settlement that would be agreed upon by all parties. And now we seem to be breaching that agreement.

Section 2(b) that you keep discussing, no new racial entities shall be created. Sovereignty neutral legislation or amendments are being proposed. And I want to thank you for stressing the sovereignty neutral position that you have taken. But when you analyze that, please try to keep it neutral.

Right now today under the act we had no intention of ever giving up Native governments. And there is nothing in the bill that jeopardized Native governments. We had no intention of giving up the opportunity for Indian country or jurisdiction on our own land.

Your statement about inserting no Indian country language is not sovereignty nor jurisdictionally neutral. There are methods today without these amendments that various village corporations and village governments have implemented, transferring title of ANCSA land over to village governments. And if you want to say that you are not going to change anything that we are able to do now with these amendments, you are going to have to keep out your language of no Indian country designation on transferred land. That is not sovereignty neutral; that is anti-Native. And if that is your intent, say so. Do not say you are going to be neutral when you are not.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Williams follows:]

STATEMENT
OF
WILLIAM C. "SPUD" WILLIAMS, PRESIDENT
TANANA CHIEFS CONFERENCE, INC.

BEFORE
THE

SENATE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER
AND RESOURCE CONSERVATION,
COMMITTEE ON ENERGY AND NATURAL RESOURCES

REGARDING

S. 2065, A BILL TO AMEND THE
ALASKA NATIVE CLAIMS SETTLEMENT ACT
OF
1971

AUGUST 4, 1986
WASHINGTON, D.C.

Mr. Chairman, members of the Committee, I am William C. Williams, President of the Tanana Chiefs Conference, Inc. (TCC), the regional Native nonprofit consortium of the 43 Interior Alaska Athabascan villages. TCC was one of the original Native organizations which sought passage of the Alaska Native Claims Settlement Act (ANCSA), and today we come before you to urge passage of amendments to the ANCSA to address what are commonly referred to as "1991" problems. At this point, H.R. 4162 has passed the House of Representatives, and that bill enacts necessary changes to deal with these problems and is supported by TCC.

ANCSA was a settlement of the Alaska Native's aboriginal land claims. It was a unique experiment which differed greatly from other Indian land settlements. Land and cash benefits were made to special profit corporations established under the Act. These corporations were new entities to us. They were very different from our tribal institutions. But the corporations, as established under the Act, lack adequate protection to insure Native control and ownership of the Native lands.

Under current law, in 1991, Native stock in these corporations becomes freely alienable. Native lands which are used for subsistence hunting and fishing and not generating income will become taxable. Additionally, Natives born after 1971 were not enrolled under the Act, and therefore not eligible to participate in the settlement of Native claims. Our corporations cannot give special benefits to elders, and we fear that these may never realize a benefit from the settlement.

Additionally, we really question whether ANCSA has met the real economic and social needs of our people. As the Draft ANCSA 1985 Study conducted by the Department of the Interior noted, there has been real economic, social and political progress by Alaska Natives since 1971, but most of that progress is attributable to Indian programs such as the Indian Self-Determination Act, Indian Health Care Act, Indian Child Welfare Act, and the subsistence provisions of the

Alaska National Interest Land Conservation Act. While a few of the regional corporations are successful from a bottom line perspective, most of the corporations formed under the Act have either been marginally successful or lost money. Again, the reasons for this are rooted in the limitations of the corporate structure and its incompatibility with Native society and culture.

The proposal before you does not abandon the corporate model. Rather, it offers several options to Natives so they may effectively deal with these problems. It automatically extends protections on Native stock and land. It authorizes Native corporations to opt out of these provisions if the majority of shareholders desire. It allows corporations to issue special stock to elders and new stock to Natives born after 1971. Finally, it allows Natives the option of transferring their land to "qualified transferee entities" such as Native traditional and I.R.A. councils, trusts and other similar entities in order to protect Native control.

Some non-Native concern has been expressed that this legislation impairs or reduces the rights of individual shareholders to realize a maximum economic benefit from their stock. This criticism holds that the right of the individual shareholder to realize an individual economic benefit from the stock is greater than the village's interest in protecting its land base for future generations. To us, this view represents the historical clash between Native and non-Native values in this country, an effort to crush and destroy our culture, and a fundamental misunderstanding of the ANCSA.

It is important to understand that ANCSA was not a settlement with individual Natives. We living today have no greater right to the land than our forefathers and our children. The individual interest in our lands under ANCSA does not come from individual risk investment, but comes from the settlement of our aboriginal tribal land claims. ANCSA corporations are very different than G.M. or A.T.& T., and different considerations apply.

The cultural differences are also important. The idea that group rights must give way to individual rights reflects non-Native values, not Native values. Our people are a communal people. We live in small scattered villages, and our subsistence lifestyle require us to work together and for each other in order to survive. We have strong traditions of sharing. When a man takes a moose, he shares it with the village. We share our homes. We have great respect for individual rights, however, land is not an individual right; it is a group right. To us it is morally wrong for a single person to stop our people and future generations from protecting our lands. We want to protect our culture, and part of that culture is the recognition of the individual's responsibility to the people as a whole. Those that urge we abandon these values wish to destroy our culture, and we desire to protect our culture.

Finally, we question whether such people really have the best interest of Native people at heart. In the late 1800's, the country adopted the allotment policy to break up the Indian land holdings and give parcels to individual Indians. That policy was designed to recognize the right of the individual Indian too. "Surplus" lands were sold to non-Natives. When the Allotment Act was signed by President Grant, he asked, "When will the white man's thirst for Indian land be satisfied?" Today we wonder the same. Those that advocate to "protect individual Indian rights" are frauds. They merely "thirst for Indian land", for they are either ignorant of the historical fact of communal Indian land ownership, or worse, they desire the disintegration of that historical ownership. They want to take what little we have left so that we will be a landless and impoverished people. It is immoral and reprehensible to pretend to protect Indian rights when that "protection" leads to the destruction of Indian culture and the loss of their already decimated land base.

In addition to these general comments, we wish to offer specific suggestions on the bill in light of passage of H.R. 4162.

1. The Sec. 7(c) Disclaimer

As the House report noted, one of the most difficult parts of this bill deals with the Sec. 7(c). The problem is that everyone wants this bill to be "sovereignty neutral", i.e., that the bill should not affect in any way the scope of the Alaskan tribes' powers of self-government. TCC strongly supports the right of self-government which has been a part of our American Federal system from the founding of this country. Indeed, the Treaty of Cession, in which the U.S. acquired its interest in Alaska from Russia guarantees to the Alaskan Native people their rights to be treated as other Indian tribes in this country. We seek nothing more than to have this legislation remain silent upon those issues. We believe that this is a land claims bill, not a sovereignty bill. At this time, it is up to the Courts to decide what those rights are, or at some future date we may be able to negotiate our jurisdictional claims with the State. We prefer to resolve these issues in the future.

We realize that the current language in the bill and that contained in the House version attempts to do this. We also realize that some groups wish to change the section to be less than sovereignty neutral, i.e., to do away with our existing rights. We propose to change the existing language to make it more neutral, i.e., to read:

> No provisions of the Alaska Native Claims Settlement Amendments of 1986 shall be construed as affecting in any way the governmental power of an Alaska Native village entity under existing law.

Thus, we hope to make the bill truly neutral on the subject. The alternative is to strike the section in its entirety and remain silent on the issue.

We are aware of proposals to insert language in the bill which would abrogate the existence of Indian country in Alaska and abrogate any trust relationship between the Federal government and Alaska Natives. We are absolutely opposed to any such language. These legal principles are the foundations of our rights to self-government and our special relationship to the federal government. Such language amounts to termination and would violate the sacred promise of this Administration, contained in the President's Indian Policy. This Congress and this Administration has repudiated termination because of the disastrous effect it has had on Indian people subjected to that policy. At this time in history, it is inconceivable that this country would return to a policy which is both morally bankrupt and a proven failure. It is even more inconceivable that this policy should be considered in regard to the Alaskan Natives, for our people are the most isolated of the Native American groups in this country and have strong traditions of village self-governments which have only been recently affected by outside influences. Many of our elders remember seeing the white man for the first time, and for them it is inconceivable that this country would want to destroy our age-old institutions.

2. Favor Opt-Out Ballot Measure Only

TCC has very strong concerns that the language contained in the current senate draft is very confusing in respect to the ballot procedures for lifting restrictions on the alienation of stock. The House version provides clearer language which provides asking shareholders as to whether restrictions are to be lifted (opt-out). TCC favors this approach since it avoids the possibility of great confusion of Native shareholders who may otherwise be presented with quite different ballots on the same question in their regional and village corporate elections.

3. Limit Opt-Out Elections to Every Twenty Years

TCC favors changes to the bill which will only allow elections to lift restrictions every twenty years. The current language could led to recurring corporate proxy fights over this issue, and this in turn will only result in corporate instability and social disharmony within Native society. By limiting elections to twenty years, the process will allow future generations to decide this issue without undue conflict. This concern is contained in Amendment No. 2 of the TCC proposals made in May. The House version does not contain these provisions, but we advocate that the Senate add these provisions.

4. One Year Minimum Delay in Effective Date of Lifting Restrictions

The House version also does not contain TCC's proposal to provide a minimum one year delay between the election and the effective date in order to allow reconsideration. If restrictions are lifted, it will affect not only the current generation of shareholders, but also their descendents, and once done, it cannot be undone. It is therefore important to guard against mistakes. A one year delay with a possibility of reconsideration would allow a "cooling off" period in which the shareholders might wish to change their votes. In this way, Congress can be assured that the removal of restrictions was not the result of deceit or misinformation. This proposed language offered by TCC in May would provide a "closed" procedure preventing annual proxy battles. We would urge consideration by the Senate of this proposal.

5. Different Minimum Votes for Different Actions

The House bill was amended to provide that at least a majority of all the shareholders agree before any restrictions are lifted and that a lesser vote would be sufficient to transfer land to a qualified transferee entity. The two actions are quite distinct. Transfer is essentially a land management action, which includes a benefit to all shareholders. Lifting restrictions is a matter which lessens shareholder protections. Given these distinctions, different minimum requirements for shareholder approval should be provided. We urge the Senate to adopt the House language on this issue.

6. Clarification of Restrictions on Prior Debt

Both the House version and the Senate version are unclear regarding the effect of lifting restrictions on stock to debts incurred during the period in which the stock was restricted. Historically, federal policy has provided that when restrictions on Indian property are lifted, the property could not be seized to satisfy debts which arose during the period of restriction. The House report indicates that prior debt is not intended to attach to the stock, however, we urge the Senate to include language in the bill to clarify this.

7. Section 21(e) Apply to Transferred Land

The House bill extends Section 21(e) to transferred land. That section of ANCSA contains the federal distribution formulae for JOM and other Indian education funds which takes into account Native lands. Additionally, Sec. 21(e) provides for fire protection for undeveloped Native lands. The omission of Sec 21(e) in the Senate version is unintentional and its inclusion will avoid any major unintended consequences of a transfer of land to a qualified transferee.

8. Condemnation

The original AFN bill did not contain the provision relating to condemnation now found in Sec. 10 of the bill. These provisions were inserted after AFN submitted it's draft language and does not represent the Native consensus position. While we have no problem with condemnation actions for public projects which enhance the social and economic development of our communities, condemnation may be misused. For example, condemnation is frequently used to support infrastructure development supportive of private/public development projects. Some of these projects may destroy subsistence opportunities for our people or deprive our communities of an opportunity to develop our resources. On the other side, agencies such as the U.S. Park Service and U.S. Fish & Wildlife have expressed an interest to condemn Native lands within parks and refuges, despite a prime purpose of those parks and refuges to accommodate Native subsistence.

We support a balanced federal policy which seeks to protect subsistence and promote Native economic development in a compatible manner. An unchecked power of condemnation without federal oversight could certainly frustrate this balanced approach. Therefore, we suggest one of three options: 1) strike all reference to condemnation and allow existing law to control the matter; 2) substitute the term "federal" for the word "state" in the current language to reference federal condemnation law, or; 3) redraft the entire proviso to specifically enunciate the conditions under which land can be condemned consistent with the general guidelines that the power may not be used to deprive Native villages of economic development or subsistence.

The House bill does not address this issue and TCC would request consideration by this Committee of this issue.

9. Welfare Eligibility

The House bill contains clarification that benefits under ANCSA should not be considered in determining eligibility under certain federal programs. This protection is needed to prevent forcing Natives to sell stock to meet assistance guidelines. This provision is necessary to insure ANCSA will actually benefit Native people, while not depriving them of assistance which may be needed to meet present needs.

10. Involuntarily Dissolved Corporations

The House bill contains provisions to deal with involuntarily dissolved corporations. These corporations have been dissolved because of the failure of the corporation to file annual reports with the State of Alaska. These corporations are generally those villages for which the corporate structure is most inappropriate. Currently they are in a state of legal limbo, which would be corrected by the House version. Under those terms, the village could petition for a Court supervised vote on transfer to a Q.T.E. TCC favors this proposal as the only practical means to deal with this most difficult legal problem.

11. Tax Effect of Transfer

The possibility exists that the I.R.S. would impose taxes on transfers to Q.T.E. under the bill. We do not believe that such transfers should be recognized as tax events since the Q.T.E. section mandates that all shareholders be part of the Q.T.E. We therefore request the committee to add a section to avoid imposition of such tax consequences.

12. Inheritance by Non-Natives

The House bill contains provisions which allow escheatment of corporate stock in the case of a Native person dying without a Will. TCC supports this provision of the House bill, and we urge the Senate to adopt a similar provision. This will prevent the incidental loss of Native control unless there is a clearly stated intention of a Native stockholder to pass stock to a non-Native. This represents a compromise from the original AFN bill and we ask the Senate to accept the terms of that compromise.

13. Indian Legislation

The House version of the legislation contains a clarification that this legislation is Indian legislation within the meaning of the Indian Commerce Clause. TCC supports this language because of the nature of this legislation being of a Native land claims settlement. This legislation contains stipulations unique to the settlement of aboriginal claims thereby requires the invocation of Congress plenary power over Indian Affairs.

14. Land Bank Stipulations

We understand that there is some concern over extending land bank stipulations set forth in ANILCA to undeveloped Native lands as a condition for protection under these Amendments. TCC strongly opposes this proposal. The Land Bank concept has proven to be extremely difficult to implement, draining precious resources in legal and administrative costs to implement its cumbersome procedures. Moreover, the proposal seeks to extend federal control over private lands. Such a policy is regressive in seeking to perpetuate paternalistic federal control over Indian land. Such a policy is totally at odds with this Congress' promise of self-determination for Indian people, and we merely ask that Congress consistently implement its policy of Indian self-determination by refusing to extend federal management over the lands we've retained.

CONCLUSION

This bill is the product of considerable involvement by the people of Alaska. For the last three years, the Alaska Federation of Natives (AFN) have worked to develop this bill. During that period, meetings were held throughout Alaska in most of the villages and all the cities of the State. As Senator Murkowski noted at the Fairbanks hearings in May, Congressional hearings have been held in Hoonah, Barrow, Kotzebue and Washington, D.C. Since that time, Senate hearings have been held in Fairbanks, Anchorage and Bethel. This bill is the product of the Alaskan people, both Native and non-Native. It is now time to pass this legislation. It is less than five (5) years before 1991, and if this bill is to be effective, it will take every bit of our remaining time for the village and regional corporations to make the fundamental decisions raised by this bill. A one or two year delay of this bill will only serve to frustrate attempts by the Native people to implement its provisions. We therefore ask immediate action by the committee to move this bill to passage.

Senator **Murkowski**. I think if you will look at the record, you will find that all reference to Indian land or management of fish and game or sovereignty is reflected in these amendments that are pending as opposed to the original legislation, and if there is any other formal reference contrary to that, why I would appreciate if you would point it out.

Our next witness.

STATEMENT OF MITCH DEMIENTIEFF, VICE PRESIDENT, TANANA CHIEFS CONFERENCE, CHIEF OF THE NATIVE VILLAGE OF NEANA, FAIRBANKS, AK

Mr. **Demientieff**. Thank you, Senator Murkowski. My name is Mitch Demientieff. I am the chief of the Native village of Neana and also the vice president of the board of directors of Tanana Chiefs Conference. As such, within the region and at the local level, we have had numerous meetings regarding the 1991 concerns. Our concerns have been expressed with the Tanana Chiefs Conference, and we do support the positions taken by the Tanana Chiefs Conference.

In years past, I have served with Toghetthele Corp., which is our village corporation. I was chairing the corporation when we selected our lands. A large part of our lands were selected with the idea of protecting our subsistence way of living, and so that was a major factor in our land selections.

In the early days, as has been documented many times, the Native people in our area were very much concerned with individual rights. What would happen most often would be the chief would simply get on the roof of a house and make a speech about what his plan was or where he was going, and basically it was the individual's right. He could either choose to follow that person or choose to follow another and go whichever way he wanted to go.

Senator, the last time I got on the roof at home in Neana, I am here to report to you that people in Neana and most people in the Interior in the villages are very concerned with the idea of the land that was selected for the interest of the group as a whole be protected and continue to be protected for the group as a whole.

There are some individual concerns I think that can be protected and should be protected basically at the local level. There would be things in terms of homesites or these kind of things that are small, individual benefits to individual shareholders.

We can and we have discussed it at the local level and we will resolve those issues at the local level, and well they should be. I think it is very important that we understand that the individual rights are important to us as individuals, but the group rights are so very, very important and override these concerns where the lands were selected in the interest of the group as a whole.

With that, Senator, I close my testimony.

Senator **Murkowski**. Thank you.

Mr. Walleri, do you have a statement?

STATEMENT OF MICHAEL J. WALLERI, ATTORNEY FOR TANANA CHIEFS

Mr. **Walleri**. Thank you, Senator.

Essentially, what I would like to address in my oral testimony is our concerns about the suggestion discussed today of the insertion of language which may go beyond the sovereignty neutral positions that have generally been adopted in the past by the members of this committee, and also the confusion about the individual rights in the fifth amendment and the Indian legislation, as a matter of law.

As Mr. Williams pointed out, I think it is very important to remember that when Alaska was acquired or when the interest of the United States in Alaska were acquired from Russian under the Treaty of Session that that treaty specifically guaranteed to the Native Alaskans that they would be treated equally and in a similar manner as those Indian tribes in the lower 48 and the principles of Federal Indian law would apply to them.

The disclaimer in the Statehood Act, contrary to some statements that have been made today, the State of Alaska Statehood Act does have a disclaimer in it, and it is the same as many States. And basically the record is very clear that Alaska came in on an equal footing with the other States and acquired no unique powers in the area of Indian law or the governance of Natives other than any other State.

More importantly, as members of this committee have pointed out, it is important that this legislation reflect current Federal policy. Part of that Federal policy is this administration's, the Reagan administration's policy which repudiates termination and promotes tribal government. We are concerned that any language that is to be inserted reflects the Reagan administration policy, which specifically includes Alaskan Natives.

The Department has expressed concern over the continuation of policy in 2(b). But as Mr. Williams pointed out, that language has been very clear that does not mention Indian country. It is in fact truly sovereignty neutral. We would prefer that that policy be continued in this legislation.

Finally, I think it is very important to understand that the issue, the "sovereignty issue, 'that people are so concerned about deals with a very fundamental, very important right which this country has pledged itself to under the Helsinki accords, which I know your good office has supported to its fullest. The U.S. Compliance Report produced by the U.S. Committee in 1979 pointed to the antitermination policies of this Government as the keystone in the corner of the U.S. recognition of Native rights. That includes the rights of self-government which we fear may be adversely affected by any amendments to the House bill on this issue.

We support a sovereignty neutral bill, but we do not want any affirmative extinguishment of an existing right. I think it is very important that the bill be truly sovereignty neutral and not extinguish and not violate any principles of international law nor extinguish any existing rights under national law.

Second, there has been a great deal of confusion expressed today here over the infringement on individual shareholders 'rights and fears of the Department regarding liability arising under the fifth amendment.

As the House version points out, this legislation is Indian legislation. There have been a number of cases declaring that both

ANCSA and ANILCA is Indian legislation. The Congress has extraordinary powers in the settlement of Indian claims such as this which include the right to adjust the internal mechanisms within the tribes and within Native communities, including in the past dealing with corporations, restoration from tribes from corporations. The Menomini is a good example.

Similarly, the U.S. Congress has dealt with this issue in the context of Oklahoma and other Indian tribes and Indian settlements. The Indian involvement in the development of those changes in the internal settlement structures is a crucial consideration and I would suggest that the committee consider the fact that the Alaska Federation of Natives is supporting these amendments.

Again, just to conclude, we would support a truly sovereignty-neutral bill and we do not believe that it infringes upon the fifth amendment rights of any individuals, as it is currently written and passed by the House.

Senator **Murkowski**. Thank you, Mr. Walleri.

The particular reference that gets us, I gather, to the concern of sovereignty is the language that suggests the authorities shall be vested to transfer assets to other entities. The point has been made throughout the hearing, both by myself and others, that we are dealing with two issues here. We are dealing with amendments, currently. Whatever rights associated with the issue of "sovereignty" under the Alaska Native land claim settlement, whatever they may be, obviously are in existence. And the intent of the effort to address the issue concerning sovereignty in Indian land, intended to be addressed in the amendments only.

Now I understand the sensitivity to this. However, on the other hand, there is also sensitivity from those who would read it the other way and assume that these amendments somehow are expanding whatever rights were guaranteed under the Alaska Native Land Claims Settlement Act and see this as an avenue to achieve sovereignty by some expansion of the imagination, I guess, because clearly if you read what is proposed, if you read my opening statement, you would conclude that we do not intend the amendments to advance the case of sovereignty.

The concern here is one that I guess can probably be shared with you inasmuch as I sat through an awful lot of testimony and an awful lot of witnesses. The most extreme example would be those that proclaim that somehow the various Native groups will achieve a capability to enter into treaties with the State of Alaska and with the Federal Government. And I happen to be one, as a resident of Alaska, that does not think that this is intended, nor do I think by any means it is in the best interests of Alaska and Alaskans. But they see this obviously in the other extreme, and that extreme is what I have just outlined.

So I guess my question is: Why do we need this language transferring assets to other entities if indeed they already have whatever authority they may have? And I would appreciate anybody addressing that on the panel.

Mr. **Williams**. Yes. Senator, the basic reason for needing that language is the inconsistency in the law and that you are trying to address the real social and economic needs of Alaska Natives. Under the State law, yes, it is possible. Under State corporate law, right now you can transfer, and there has been in some cases total transfer of Native lands from the corporation to tribal governments, Menitai as being one. And right now in our region alone, we have about four villages in the process of doing very similar things. But not all their land but portions of their lands are being transferred under 14(c)(2) of the act and also through the regular process of voter approval, dissenters rights, et cetera.

But the impact of the law right now is you have to have two-thirds of the total vote in the affirmative to transfer those assets, and then you come under the fifth amendment taking-question which we are trying to address here in these amendments that in most cases would bankrupt village corporations. They would have to sell the very land they are trying to protect in order to satisfy the greed or the need of those few dissenters that no longer want to live the lifestyle of Native people. They want cash. They want to cash out and check out is the terminology that is used.

That is why we have to have the language in these amendments if you intend to do what you said, to address the economic and social needs of Native Americans. And if you put language in the bill that will close the door on what we can do now, the "no Indian country classification" to any lands transferred, I think you are putting a kill the bill clause in.

Senator **Murkowski**. Well, let us pursue that since it is a point of issue at this time.

We are saying in the proposed language or corrective amendment that the amendments themselves would not lead to the fostering of sovereignty nor the amendments themselves lead to the establishment of Indian country or management of fish and game or so forth, as opposed to the authority. I would refer you obviously to counsel, the authority, whatever authority there may be there, was not intended to be vested in the amendments but more appropriately in the act that passed in 1971.

Mr. **Williams**. In the Act itself, the negotiation between the native community and the U.S. Government, the native community had no intention of giving up those rights.

Senator **Murkowski**. I know. But this is my very point. What we are addressing here are what I am trying to attempt to point out for the record is that the amendments do not reflect on the authority that is vested in the act.

Mr. **Williams**. The amendments themselves, if they are incorporated the same way the House passed the bill, are more or less sovereignty neutral. I think they have gone over the line a little bit when they inserted the words "if any." It seems to put in the minds that Congress has a question of the powers of the Alaska Native tribes.

I think if you are really going to be sovereignty neutral in your amendments, you have got to exclude the section 7 disclaimer of any of the sovereignty neutral language itself or make it legitimately neutral.

Senator **Murkowski**. Well, turn the situation around. How can we dispell the fear of those who have testified throughout the hearing process on their concern that somehow this legislation fosters sovereignty which will create the likelihood of sovereignty which may develop in the reality of sovereignty and that that goes with it: the management of fish and game; the declaration of Indian land; the transfer of land into a tax-exempt status.

Now that is what we are talking about, and I think we ought to be open and try and address how we give the satisfaction that this is not the vehicle that provides that kind of capability.

Mr. WILLIAMS. If you want to address that concern, I think it is going to take an education process. But these amendments will not foster something that already is impossible. The sovereignty issue is a real issue, and it can happen now. Or let the courts decide if it can. Do not extinguish it in this bill.

The management of fish and game issue.

Senator MURKOWSKI. All right. Let us take management of fish and game.

Mr. WILLIAMS. The management of fish and game issue and a practical matter has to be handled at the local level. Whether you call it sovereignty management, whether you call it State management, no matter what you call it, there has to be local fish and game management in our State.

As you well know, the State cannot develop a large enough police force to police our great State. They cannot put a policeman even in every community that is going to enforce fish and game management laws. No one is more concerned with good management of fish and game—which we do not even call fish and game; we call it food—than the native people themselves.

Without those authorities to manage fish and game, there will not be management of fish and game in our State. Until there is an education process to make people realize that, then we are going to go into this fear thing that the natives are going to abuse the fish and game. The natives are not going to abuse their own food.

Senator MURKOWSKI. I do not think anyone takes issue with that, certainly not myslf or my colleagues. The concern here is, how do we ensure that we will not have a State of sovereignty? How do we ensure that we will not have the State government and the Federal Government negotiating and making treaties with Indian nations.

Mr. WILLIAMS. The treaty ability between the Federal Government and the natives has been extinguished by Congress itself. We call them agreements now. Between natives between any government, whether it be a municipal government, a borough government or a native government, what is the difference? You sit down as gentlemen and you talk over the issue; you find the practical solution and quit using scare words of racial discrimination and domination and all the things that some people seem to be afraid of, and let us face the legitimate facts that are here.

Let us make this sovereignty bill neutral. Let us realize where we are right now, if we are going to do that, and maintain the status quo that has been developed through the legimate negotiation of the Act and sit down and negotiate those things that people seem to be so concerned about.

Senator MURKOWSKI. Well, I think that is what I am attempting to enunciate to you. There is a substantial difference here and whether we acknowledge it or not, it is my interpretation that whatever authority was vested was vested under the 1972 legislation. This proposal is not a bill in a sense, but it is an amendment, a series of amendments in legislative form. From the standpoint of testimony in the hearing process and the concern of Alaskans as expressed by the question of sovereignty, these amendments, as they are currently structured, do not expand the scope of sovereignty nor the particular association of those items that are generally concerned with sovereignty—namely, Indian land and so forth—and I think that I have made that rather clear.

And your position is that you just want neutrality on it: and mine is to close the amendments, not the authorizing legislation but the amendments, to the issue of sovereignty management of fish and game on Indian land.

Yes?

Mr. SOLOMON. My only concern is that I think there needs to be some clarification that neither the Claims Act nor this bill, and the—I think the Claims Act is very clear; it does not mention the words "Indian country"; it does not mention the word "sovereignty." But it should be very clear that neither one of those bills address jurisdictional issues.

Senator MURKOWSKI. That is correct. We have had a series of hearings that have addressed these issues and it is appropriate that we respond to them. The other alternative is to leave it up to the attorneys to litigate it, which would cost everybody money.

Mr. SOLOMON. The claims however that we are talking about are not derivative of ANCSA nor are these amendments.

Senator MURKOWSKI. That is correct.

Mr. SOLOMON. And if I may, it is my understanding of your position that those claims will not be affected by this act. And if that is the case, then we have a sovereignty neutral bill. Is that the position?

Senator MURKOWSKI. Well, you have heard my position. And the nice thing about being chairman is I get to ask the questions. [Laughter.]

Mr. SOLOMON. I realize that, but I think it needs to be understood that I think from a legal standpoint it has to be understood that the jurisdictional claims are not derivative of ANCSA, they are not derivative of these bills, they will not be a derivative of this bill.

Senator MURKOWSKI. I think I have said that.

Mr. SOLOMON. But that the termination policy of this administration and the commitment of this government as embodied by the Helsinki accords, which I know you strongly support and have been a firm and solid supporter of that, and I am sure that it would not be your position to violate that.

Senator MURKOWSKI. I think my position has been pretty clear.

I have no further questions for the witnesses. I wish you a good day.

Our next panel will be panel 5: Mr. Jack Hession, Alaska representative of the Sierra Club; Mr. William Reffalt, National wildlife program director, the wilderness society; Rupert Andrews, director, Alaska Outdoor Council; and Mr. Maitland Sharpe, associate director, executive director of the Isaac Walton League of America. Do we have everybody? Who is missing?

Mr. REFFALT. Mr. Chairman, Mr. Hession, to the best of our knowledge, has been unable to get out of Alaska and is not here, so far as we know.

Senator Murkowski. It is not because you cannot get out of Alaska, I want the record to show, because there are a number of Alaskans that managed to get out.

Mr. Reffalt. He was out in the rugged outreach of Alaska.

Senator Murkowski. I see. Maybe it is too hot back here for him. Please proceed under any manner in which you are so desirous.

STATEMENT OF WILLIAM C. REFFALT, DIRECTOR, NATIONAL WILDLIFE REFUGE PROGRAMS, THE WILDERNESS SOCIETY

Mr. Reffalt. Thank you, Mr. Chairman. My name is Bill Reffalt. I am director of wildlife refuge programs for the Wilderness Society. My testimony regarding S. 2065 will be found on page 8 of my overall testimony and in appendix B.

The Wilderness Society's Alaska regional director, Susan Alexander, submitted our basic testimony to the committee at its hearing in Anchorage on May 27, 1986. In that testimony we recognized that there had been problems with the implementation of the land bank provisions of ANILCA.

I note this morning that Mr. Horn's testimony says that some of those problems at least have been resolved, and that perhaps the land bank provisions that they have now developed would be able to move them ahead. However, there has apparently been a major stumbling block and some reluctance in the Department of the Interior to move ahead with the land bank agreements.

The other hurdle seems to be the time and costs associated with negotiating the cooperative agreements. Therefore, The Wilderness Society has proposed language that would simply amend the ANILCA Land Bank provisions and which we include as appendix B, that we believe would simplify the process and make it less onerous on the part of the Native village corporations that might be interested in it and it would help execute agreements in a rapid fashion.

We would be happy to work with the committee, the Federal Government, and the Native community to develop the amendment even further, if that is necessary. But basically we would like to see the section 907 provisions of ANILCA retained as the land bank provision and simply expedited.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Reffalt follows:]

THE WILDERNESS SOCIETY

STATEMENT OF WILLIAM C. REFFALT, REPRESENTING THE WILDERNESS SOCIETY, BEFORE THE PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION SUBCOMMITTEE OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE REGARDING S.485, AUGUST 4, 1986.

Mr. Chairman, I am Bill Reffalt, Director of National Wildlife Refuge Programs for The Wilderness Society. I appreciate this opportunity to present testimony on behalf of our 160,000 members regarding S.485, a bill modifying the Alaska National Interest Lands Conservation Act (ANILCA); P.L. 96-487).

The final determination of ownership of lands underlying non-navigable water bodies in Alaska has proven to be a difficult issue to resolve. Because of this issue's inherent complexity and uncertainty, proposed solutions often have raised many new problems while leaving the uncertainties unchanged. The simple time extension granted by Congress last year remains, the preferred option for dealing with this issue in the immediate future. However, it is our belief that a congressionally directed study of the issues involved and the likely effects of alternative solutions should accompany a one year time extension. I have appended a brief outline of the elements of such a study for your consideration. We recommend that the Congressional Research Service coordinate and lead the study effort which should involve analysis of data supplied by the State, Native Corporations, the Federal Government and the major interest

1400 EYE STREET, N.W. WASHINGTON, D.C. 20005
(202) 842-3400

groups. The Wilderness Society opposes passage of S.485 because it would, in our opinion, needlessly give away interests in lands and resources of substantial value to all citizens of America and would diminish the protection and preservation of nationally significant resources within the conservation system units in Alaska.

Historical Background

With the signing of the Alaska Statehood Act (P.L. 85-508) in January, 1959, Alaska became eligible for the largest land grant ever made to a state upon entering the Union -- approximately 104.5 million acres (an area exceeding the size of the entire state of California). Further, the Act provided that the State could select its lands from any public lands in the state that were "vacant, unreserved and unappropriated." All other original state grants had followed a congressional policy adopted in 1785 of reserving "lot No. 16, of every township, [after 1848 this was changed by adding section 36 also] for the maintenance of public schools, within the said township..."[1] Thus, Alaska's land grant was both generous and unique in the history of statehood land grants.

In 1971 another unique land grant was made within the state of Alaska -- the granting of approximately 44 million acres on a priority basis to the natives in Alaska in settlement of longstanding aboriginal claims. This settlement grant also permitted selections rather than assigning arbitrary land areas and, as a recognition of the general lack of cadastral surveys in the state, directed that the selections be made in reasonably compact and contiguous blocks (the Alaska Statehood Act, for the same reason, had required state selections of no less than 5,760 acres as a general rule).

---

[1] Paul W. Gates and Robert W. Swenson, History of Public Land Law Development, p. 65 PLLRC Study Report, 1968.

In implementing each of these large and complex land grants, the U.S. Department of the Interior (DOI) fashioned policies or regulations it believed best represented the special conditions of Alaska, the needs of the grantees, the special features of these singular enactments, and the best interests of the public generally. Thus, in dealing with the matter of lands beneath non-navigable water bodies (the state was granted ownership of lands beneath navigable waters except where they had been reserved prior to statehood), DOI adopted the policy of "charging" that non-navigable acreage against the entitlement (i.e. - the acreage was subtracted from the entitlement along with the selected surrounding upland acres). That policy, adopted shortly after passage of the Statehood Act, also was formalized into regulations with regard to the native land conveyances under the Settlement Act.

To accomplish this charging of the acreage, the Bureau of Land Management (BLM) must make an initial navigability determination (final navigability is generally a matter for court determinations). If the water body involved within a selection area was judged by BLM to be non-navigable, the acreage involved was to be subtracted, along with the uplands portion of the selection, from the remaining entitlement.

Because the final navigability determination, following the successful appeal of a BLM decision, could result in the modification of a conveyance to a native village or regional corporation long after the conveyance had been made, "submerged lands" was among several issues addressed in the Alaska National Interest Lands Conservation Act. The ANILCA provisions, found in section 901 of the Act were intended to expedite the final determination of ownership of submerged lands in Alaska and to provide, where necessary, assurance that any losses of acreage due to navigability judgements would not diminish the 44 million acre land entitlement of native Alaskans. A key element of the expedited process was a time limitation on appeals by the State of Alaska to BLM navigability determinations.

Although the State of Alaska originally agreed to the time limitation (and, in fact, participated in drafting the language of section 901), they later changed that position and subsequently have filed suit against the limitation. This change in position has renewed, to some extent, the uncertainty associated with conveyance of submerged lands. In addition, the state has indicated that, if necessary, it would file navigability appeals on a large scale just ahead of the section 901 imposed time limit rather than possibly lose its claims to land pursuant to the Statehood Act.

This situation apparently lead to a 1983 decision by Secretary of the Interior James G. Watt, to suddenly and without benefit of analysis or public input, change the policy, regulations and procedures for computing chargeable acreage under both the Statehood Act and the Native Claims Settlement Act, and to exclude the acreage beneath non-navigable inland lakes larger than 50 acres in size and non-navigable inland streams greater than 198 feet in width.

This precipitous change, after nearly 25 years of conveyances to the State and over 10 years of native conveyances under the previously described policy, created major concerns about the magnitude of lands that would be involved, the resources on those lands, and the possible diminishment of the public values represented in those lands and resources. Thus, the contemporary "issue" was initiated and remains unresolved today. In late 1985 and early 1986 the Congress passed legislation that extended the time deadline for the state to avoid the filing of numerous lawsuits affecting many native land conveyances. In addition, S.485 and similar legislation in the House has been proposed as a "solution" to the problem.

However, S.485 and the House bill simply enact Secretary Watts' policy change. Neither the major issues created by his changes will be resolved nor, in our opinion, will the general public interest be served by passing S.485.

The Issues

Passage of S.485, or the continued implementation of Secretary Watt's policy would effectively increase the land grants to the State of Alaska and native corporations. Although numerous estimates of the amounts of increase have been made, the truth is that no one knows how many additional acres will be conveyed. It may be only 1 or 2 million acres (i.e. an area ranging in size from larger than Rhode Island to an area equal to Rhode Island and Delaware combined), or it may be only 3-6 million acres (i.e. an area about the size of Connecticut or up to an area equivalent to New Hampshire or Vermont). These lands and their resources will be transferred to either state public domain or private corporate status. Either way, the national public interests will be diminished.

A key question in the issues is, in our view, "Is it necessary to give away this substantial amount of land and other resources to resolve the problem?" We believe the answer is no. Section 901 of ANILCA was part of a larger compromise but it contains the essential mechanisms to 1) assure certainty in a reasonable time, 2) provide back-up lands in case a native corporation loses lands in a navigability judgement, and 3) provides the state a reasonable amount of time to protect its interests. What is needed for Section 901 to succeed is simply good faith implementation by all the parties that agreed to it in the first place. Section 901 was a bargain struck between the state, the natives, the Congress, the federal government and the other interested parties. It can work if the parties carry out that bargain.

Conclusion

It has been argued by some that giving the lands under non-navigable water bodies without charging the acreage would simply be a matter of treating Alaska and the native corporations like all the other states and other entrymen such as homesteaders, etc. in those other states. Frankly, given the particularly special nature of the Statehood land grant and the overall unique settlement provided in the native settlement Act, it seems inappropriate to attempt such a correlation on this matter. There is no real comparison between the grants of sections 16 and 36 (no matter where they lie or of what they consist) with a grant to select 104.5 million acres from any vacant, unreserved or unappropriated lands in the state. Similarly, there is an enormous difference between a homesteader's 160 ac. (or even a 640 acre desert grant) entry and the minimum village corporation grant of 69,120 acres throughout most of Alaska (in S.E. Alaska the minimum is 23,040 acres). Thus, the "equal treatment" argument lack substance.

It has been argued that it is necessary to give these extra entitlements to solve this problem. However, the problem today exists because some of the same parties that will receive these extra lands and resources have failed to abide by their previous agreement and have not implemented the provisions of section 901 of ANILCA. Thus, we believe this grant of substantial extra lands and resources is not warranted.

We are willing to accept another one year extension of the time limit. We believe our recommended study is vital to a better understanding of all the factors in the issue and to assessing the ramifications of the several alternatives solutions, including the implementation of the existing law.

Regarding S.2065, The Wilderness Society's Alaska Regional Director, Susan Alexander, submitted testimony to the Committee as its hearing in Anchorage on May 27, 1986. In that testimony, we recognized that there have been problems with the implementation of the Land Bank provisions of ANILCA. Despite the fact that one agreement has been executed in the interim, a major stumbling block still appears to be reluctance of the Departme of the Interior to enter into Land Bank agreements. The other hurdle seems to be the time and costs associated with negotiating the cooperative agreements. Therefore The Wilderness Society has developed language which would simplify the process, through use of a model agreement, and thereby expedite the execution of agreements (attached as appendix B).

The Wilderness Society stands willing to work with the Committee and the Native community to develop an amendment that would effectuate the Land Bank provision of ANILCA. In light of our belief that the existing Land Bank provisions can be improved the Society maintains its position that section 10 of S.2065 is unnecessary at this time.

Thank you Mr. Chairman, I would be happy to answer questions as time permits.

APPENDIX A

Outline for Congressional Research Service Study of Alaska submerged lands issue

Following is an outline of the elements proposed for such a study:

1. Study to be completed in six months from the date of passage of time extension.
2. Data to be supplied by the State of Alaska, native village and regional corporations, the federal land management agencies and major interested organizations.
3. Data to be included:
    - A) A comparison of the impacts on the federal lands of Alaska resulting from application of the current Department of Interior policy vs. the previous policy governing conveyance and chargeability of lands to the State and native corporations under waterbodies determined to be non-navigable by the BLM.
    - B) A review of pending litigation, including the various "test cases" brought by the State of Alaska in an effort to clarify navigability criteria and an estimation of the time needed to conclude these cases.

C) An analysis of policy alternatives available to the Congressional Committee to resolve the submerged lands conveyances and chargeability issues related to navigability determinations, including implementation of the current Sec. 901 provisions.

It is our recommendation that an initial "scoping" process by the CRS would be used to define the issues and their special needs. Data collection and analysis would then proceed with policy option development and analysis being the final products.

APPENDIX B

DRAFT ALTERNATIVE LANGUAGE TO SECTION 10 OF S.2065, H.R. 4162 REGARDING THE ANILCA LAND BANK

Sec.10. Section 907(a) of the Alaska National Interest Lands Conservation Act is amended by adding the following: "(4) Within 120 days of enactment of this provision, the Secretary shall prepare a model agreement pursuant to the terms outlined in subsection (b) hereof. The model will be subject to amendment and/or negotiation to fit the circumstances of a particular landowner."

Section 907 (c)(2) of the Alaska National Interest Lands Conservation Act is amended by replacing "." at the end of section 907 (c)(2)(C) with ";" and adding the following: "(D) judgment resulting from any claim based upon the laws of bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally."

Section 907 of the Alaska National Interest Lands Conservation Act is amended by adding the following: "(g)(1) Within 90 days of receipt of an application by a landowner to enter into an agreement, the appropriate Regional Director shall either approve or deny part or all of the proposal or recommend further negotiation. The Regional Director shall provide, in writing, a full explanation of the reasons for denial or shall specify those provisions to be subject to further negotiation.

(2) If notice is not provided within the stated time, the terms of the model agreement will automatically be effectuated and the protections outlined in subsection (c) will attach.

(3) Negotiations on disputed provisions are to begin within 30 days of the notice.

(4) A denial may be appealed to the Secretary within 30 days of notice of the denial. The Secretary will respond to an appeal within 30 days of receipt of a notice of appeal and/or a statement of reasons. (h) REPORTS TO CONGRESS. -- (1) Within one year of enactment of this provision, and annually thereafter, the Secretary shall prepare and submit a status report to the Senate Energy and Natural Resources Committee and the House Interior and Insular Affairs Committee on the implementation of this section. The report shall include --

(A) A list of all applications for agreements;

(B) a description of all executed agreements;

(C) a list of all pending negotiations including a description of the provisions in dispute and the reasons for the dispute; and

(D) a description of all denied agreements and the reasons for the denials. (2) Four years after enactment of this provision, the General Accounting Office shall prepare and submit to the President of the Senate and the Speaker of the House of Representatives an evaluation of the implementation of this section. The evaluation shall --

(A) assess the efficacy of the process;

(B) report specific cases where proposed agreements were not executed and the reasons therefor;

(C) make specific recommendations, if necessary, for improvement of the process. In preparing the evaluation, the General Accounting Office shall consult with Federal and State land managing agencies, the Alaska Native Coalition, or its successor organization, the Alaska Federation of Natives, all Native corporations party to agreements or which applied therefore, Federal and State land managing agencies, and conservation organizations. Notice of the evaluation shall be published in the Federal Register and made available to the public.

Senator MURKOWSKI. Thank you very much.

Mr. Andrews?

STATEMENT OF RUPERT E. ANDREWS, DIRECTOR, ALASKA OUTDOOR COUNCIL.

Mr. ANDREWS. Yes. Thank you, Senator. Just for the record, my name is Rupert Andrews. I am a past president and currently a director of the Alaska Outdoor Council, which is the largest coalition of sportsmen clubs in the State of Alaska.

Presently this subcommittee is considering Senate bill 2065, amendments to the Alaska Native Claims Settlement Act, and I am here today to testify against the passage of these amendments.

The amendments that you are considering would in our opinion grossly alter the intent of the original Native Claims Settlement Act, which was to be a full settlement of all Alaska Native land claims. The settlement, more popularly known as ANCSA, was to settle all Native claims in Alaska. This Committee should not lose sight of this fact and should bear in mind during these deliberations the congressional declaration of purpose in section 2 when it stated:

> The settlement should be accomplished without any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska.

Further, in section 4 it declared:

> All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

ANCSA, as we have heard, established regional and village corporations. The corporations were endowed with almost $1 billion, half State and half Federal dollars, and 11 percent of Alaska's private property. It was the largest land settlement negotiation with an American Native population in U.S. history.

The amendments as proposed in Senate bill 2065 will have a most unsettling effect on the 1971 Alaska Native Claims Settlement Act. The sponsors of this legislation have stated that these proposed amendments have nothing to do with establishing Native sovereignty. In listening to your comments this morning, Senator Murkowski, I hope you will bear with me; I have not heard these amendments before that you were mentioning, but I am one of these people that have a very deep concern. The organization I represent has a very deep concern that we are looking at a possibility of a sovereign situation.

The amendments in our opinion have been drafted by the Alaska Federation of Native's attorneys to exactly achieve native sovereignty. While appearing to be innocuous, some of the amendments are deceptive and are designed to facilitate native village sovereignty.

This morning, we have heard discussion on section 7(c), which is an example in point. And it is the disclaimer which I will not read. But the proposed disclaimer amendment 7(c) in our opinion would negate the original intent of ANCSA, which was to create an entirely different situation in Alaska as to the Federal Government's role as a guardian of Alaska Native interests than in the lower 48. This role is referred to as the trust relationship between the Federal Government and Native Americans.

ANCSA created regional and village corporations which could receive fee simple lands just as any other private corporation, while eliminating the Secretary of Interior's trust relationship to these lands. In short, congressional intent in 1971 was to allow Alaskan Native people to participate in a cash economy on equal footing with other private corporations without creating reservations or a trust relationship—both necessary elements in defining Indian country.

Indian law authorities have long recognized that the most important elements in determining whether there is Indian country is legal title vested in a tribal entity or held in trust by the U. S. Government.

I will summarize. Section 7(c) is not a clarifying technical amendment; it is not a procedural matter. It is a very significant change in the settlement bargain originally struck between the parties. This amendment seeks to roll back the limiting or repealing effect ANCSA had insofar as tribal sovereignty is concerned.

The 1991 amendments are not neutral regarding sovereignty. Their provisions will affect all Alaskans. It is abundantly clear that the vast majority of Alaskans are not aware and do not understand the impact of amendments to ANCSA.

In summary, quickly, contrary to recent statements, we feel there has not been adequate public review of the amendments to ANCSA. The House version has been amended and a copy of these amendments was received in Juneau just 6 days ago from today, and they have not received public review.

If the alienation and conveyance provisions of the 1991 amendments are enacted, a very clear statement must be included that such provisions will not create Indian country in Alaska. Alaska Natives have justifiable concerns regarding loss of control over their corporate lands. Perhaps the alienation and convenience provisions are warranted, but they should not create wholesale problems for anyone else.

Thank you.

[The prepared statement of Mr. Andrews follows:]

ALASKA OUTDOOR COUNCIL, INC.

REMARKS GIVEN BY RUPERT E. ANDREWS
ON AUGUST 4, 1936 TO THE SENATE
SUB COMMITTEE CONSIDERING S.2065

GOOD MORNING -- MY NAME IS RUPE ANDREWS. I AM A PAST PRESIDENT AND CURRENTLY A DIRECTOR OF THE ALASKA OUTDOOR COUNCIL, WHICH REPRESENTS 45 DIFFERENT OUT-OF-DOOR ORGANIZATIONS WITH 9,000 MEMBERS IN THE STATE OF ALASKA. THE MEMBERSHIP REPRESENTS THE MOST VARIED GROUP OF OUTDOOR INTERESTS WITHIN ALASKA RANGING FROM SUCH DIVERSE ACTIVITIES AS MUSHROOM COLLECTING TO SKY DIVING, DOG MUSHING, HUNTING, FISHING, TRAPPING AND WHITE WATER KAYAKING.

THIS SUBCOMMITTEE IS PRESENTLY CONSIDERING S.2065 -- AMENDMENTS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. I AM HERE TO TESTIFY AGAINST THE PASSAGE OF THESE AMENDMENTS. THE AMENDMENTS THAT YOU ARE CONSIDERING WOULD GROSSLY ALTER THE INTENT OF THE ORIGINAL NATIVE CLAIMS SETTLEMENT ACT WHICH WAS TO BE A FULL SETTLEMENT OF ALL ALASKA NATIVE LAND CLAIMS. THE SETTLEMENT, MORE POPULARLY KNOWN AS ANCSA, WAS TO SETTLE ALL NATIVE CLAIMS IN ALASKA. THIS COMMITTEE SHOULD NOT LOSE SIGHT OF THIS FACT AND SHOULD BEAR IN MIND DURING THESE DELIBERATIONS THE CONGRESSIONAL INTENT STATED IN SECTION 2 OF ANCSA WHEN IT STATED:

> "THE SETTLEMENT SHOULD BE ACCOMPLISHED RAPIDLY, WITH CERTAINTY, IN CONFORMITY WITH THE REAL ECONOMIC AND SOCIAL NEEDS OF NATIVES, WITHOUT LITIGATION, WITH MAXIMUM PARTICIPATION BY NATIVES IN DECISIONS AFFECTING THEIR RIGHTS AND PROPERTY, WITHOUT ANY PERMANENT RACIALLY DEFINED INSTITUTIONS, RIGHTS, PRIVILEGES, OR OBLIGATIONS, WITHOUT CREATING A RESERVATION SYSTEM OR LENGTHY WARDSHIP OR TRUSTEESHIP, AND WITHOUT ADDING

TO THE CATEGORIES OF PROPERTY AND INSTITUTIONS ENJOYING SPECIAL TAX PRIVILEGES OR TO THE LEGISLATION ESTABLISHING SPECIAL RELATIONSHIPS BETWEEN THE UNITED STATES GOVERNMENT AND THE STATE OF ALASKA.

IN SECTION 4 IT DECLARED THAT "ALL ABORIGINAL TITLES, IF ANY, AND CLAIMS OF ABORIGINAL TITLE IN ALASKA BASED ON USE AND OCCUPANCY, INCLUDING SUBMERGED LAND UNDERNEATH ALL WATER AREAS, BOTH INLAND AND OFF-SHORE, AND INCLUDING ANY ABORIGINAL HUNTING OR FISHING RIGHTS THAT MAY EXIST ARE HEREBY EXTINGUISHED."

ANCSA ESTABLISHED REGIONAL AND VILLAGE CORPORATIONS. THE CORPORATIONS WERE ENDOWED WITH ALMOST $1 BILLION DOLLARS -- HALF STATE AND HALF FEDERAL DOLLARS -- AND 11 PERCENT OF ALASKA AS PRIVATE PROPERTY. IT WAS THE LARGEST LAND SETTLEMENT NEGOTIATION WITH AN AMERICAN NATIVE POPULATION IN UNITED STATES HISTORY.

THE AMENDMENTS AS PROPOSED IN S.2065 WILL HAVE A MOST UNSETTLING EFFECT ON THE 1971 ALASKA NATIVE CLAIMS SETTLEMENT ACT. THE SPONSORS OF THIS LEGISLATION, THE ALASKA DELEGATION, HAVE STATED ON SEVERAL PUBLIC OCCASIONS THAT THIS LEGISLATION IS INNOCUOUS AND THAT THESE PROPOSED AMENDMENTS HAVE NOTHING TO DO WITH ESTABLISHING NATIVE SOVEREIGNTY. NOTHING COULD BE FURTHER FROM THE FACTS. THE AMENDMENTS HAVE BEEN DRAFTED BY THE ALASKA FEDERATION OF NATIVE'S ATTORNEYS TO EXACTLY ACHIEVE NATIVE SOVEREIGNTY. WHILE APPEARING TO BE 'INNOCUOUS,' SOME OF THE AMENDMENTS ARE DECEPTIVE AND ARE DESIGNED TO FACILITATE NATIVE VILLAGE SOVEREIGNTY. SECTION 7(C) IS AN EXAMPLE IN POINT. IT READS:

"NOTHING IN THIS ACT SHALL BE CONSTRUED AS ENLARGING OR DIMINISHING OR IN ANY WAY AFFECTING THE SCOPE OF ANY

GOVERNMENTAL AUTHORITY OF A FEDERALLY RECOGNIZED TRIBE, TRADITIONAL NATIVE COUNSEL, OR NATIVE COUNSEL ORGANIZED PURSUANT TO THE INDIAN REORGANIZATION ACT, AS AMENDED, OR ANY RIGHT, PRIVILEGE, OR IMMUNITY OF ALASKAN NATIVES AS NATIVE AMERICANS IN THEIR RELATIONSHIP WITH THE GOVERNMENT OF THE UNITED STATES."

THE PROPOSED DISCLAIMER AMENDMENT 7(C) WOULD NEGATE THE ORIGINAL INTENT OF ANCSA WHICH WAS TO CREATE AN ENTIRELY DIFFERENT SITUATION IN ALASKA AS TO THE FEDERAL GOVERNMENT'S ROLE AS A GUARDIAN OF ALASKA NATIVE INTERESTS THERE IN THE LOWER 48. THIS ROLE IS REFERRED TO AS THE "TRUST RELATIONSHIP" BETWEEN THE FEDERAL GOVERNMENT AND NATIVE AMERICANS.

ANCSA CREATED REGIONAL AND VILLAGE CORPORATIONS WHICH COULD RECEIVE FEE SIMPLE LANDS JUST AS ANY OTHER PRIVATE CORPORATION WHILE ELIMINATING THE SECRETARY OF INTERIOR'S TRUST RELATIONSHIP TO THESE LANDS. IN SHORT, CONGRESSIONAL INTENT IN 1971 WAS TO ALLOW ALASKAN NATIVE PEOPLE TO PARTICIPATE IN A CASH ECONOMY ON EQUAL FOOTING WITH OTHER PRIVATE CORPORATIONS WITHOUT CREATING RESERVATIONS OR A TRUST RELATIONSHIP, BOTH NECESSARY ELEMENTS IN DEFINING INDIAN COUNTRY. INDIAN LAW AUTHORITIES HAVE LONG RECOGNIZED THAT THE MOST IMPORTANT ELEMENTS IN DETERMINING WHETHER THERE IS INDIAN COUNTRY IS LEGAL TITLE VESTED IN A TRIBAL ENTITY OR HELD IN TRUST BY THE UNITED STATES GOVERNMENT. OTHER THAN THE METLAKATLA INDIAN RESERVATION ON ANNETTE ISLAND, THERE IS PRESENTLY NO INDIAN COUNTRY IN ALASKA.

ANY OPTION WHICH ALLOWS THE RESTRICTION OF LAND OWNERSHIP TO ONLY NATIVES HAS TREMENDOUS IMPLICATIONS FOR "INDIAN COUNTRY" AND SETS THE STAGE FOR SOVEREIGNTY.

THE PRESENCE OF INDIAN COUNTRY IS ONE OF THE APPARENTLY THREE PREREQUISITES IN ORDER FOR A VILLAGE-TRIBE TO GAIN SOVEREIGNTY IN ADDITION TO TRIBAL STATUS AND A FEDERAL TRUST RESPONSIBILITY. ONE OF THE PROPOSED AMENDMENTS IN S.2065 WILL ALLOW PRIVATELY OWNED NATIVE CORPORATIONS TO TRANSFER THEIR ASSETS AND LAND HOLDINGS TO TRIBAL GOVERNMENTS. INDIAN AUTHORITIES HAVE MAINTAINED THAT IN DETERMINING INDIAN COUNTRY WITH ITS CONCOMMITMENT TRIBAL GOVERNMENT ENTITIES TO OWNERSHIP OF LAND, CONGRESS WILL CREATE A DIFFERENT 'RESERVATION' SYSTEM THAT FUNDAMENTALLY TRANSFORMS THE NATURE OF THE RELATIONSHIP BETWEEN ALASKA NATIVES AND THE STATE AND FEDERAL GOVERNMENTS.

SECTION 7(C) IS NOT A CLARIFYING TECHNICAL AMENDMENT; IT IS NOT A PROCEDURAL MATTER; IT IS A VERY SIGNIFICANT CHANGE IN THE SETTLEMENT BARGAIN ORIGINALLY STRUCK BETWEEN THE PARTIES. THIS AMENDMENT SEEKS TO 'ROLL BACK' THE LIMITING OR REPEALING EFFECT ANCSA HAD INSOFAR AS TRIBAL SOVEREIGNTY IS CONCERNED. THE 1991 AMENDMENTS ARE NOT NEUTRAL REGARDING SOVEREIGNTY. THEIR PROVISIONS WILL AFFECT ALL ALASKANS. IT IS ABUNDANTLY CLEAR THAT THE VAST MAJORITY OF ALASKANS ARE NOT AWARE OF AND DO NOT UNDERSTAND THE IMPACT OF THE AMENDMENTS TO ANCSA. BOTH NATIVE AND NON-NATIVE ALASKANS HAVE NOT HAD ADEQUATE OPPORTUNITY TO CONSIDER THE EFFECTS OVERALL. THIS BILL IS HIGHLY CONTROVERSIAL AND WILL CREATE ADDITIONAL DEVISIVENESS BETWEEN NATIVE AND NON-NATIVE ALASKANS UNLESS THE AMENDMENTS ARE CLEARLY UNDERSTOOD AS TO WHAT THEY WILL DO. THE ALASKA OUTDOOR COUNCIL IS MOST CONCERNED WITH THE IMPACT ON PUBLIC HUNTING, FISHING AND TRAPPING BUT THERE ARE OTHER CONCERNS AS WELL. THE RIGHTS OF NATIVE STOCKHOLDERS MUST BE

PROTECTED AND THE IMPACT ON THE STATE OF ALASKA'S ECONOMY IN THE EVENT OF TAX EXEMPTIONS NEED TO BE EXAMINED CLOSELY.

LASTLY, THERE IS NO IMMEDIATE URGENCY THAT THIS BILL BE PASSED THIS SESSION. WE ARE STILL YEARS AWAY FROM 1991. I URGENTLY REQUEST THAT THIS COMMITTEE HOLD ADDITIONAL PUBLIC HEARINGS IN ALASKA IN ADDITION TO INFORMATION WORKSHOPS. THE ALASKA OUTDOOR COUNCIL FIRMLY BELIEVES THAT THE 1991 AMENDMENTS ARE THE BEGINNING OF A PAPER TRAIL LEADING TO NATIVE VILLAGE SOVEREIGNTY -- A VIEW THAT IS SHARED BY A GROWING NUMBER OF ALASKANS AS THEY ENCOUNTER THE 1991 AMENDMENTS. IF THIS VEIW IS NOT TRUE AS THE SPONSORS CLAIM, THEN IT IS OBVIOUS THAT MORE INFORMATIONAL HEARINGS ARE NEEDED.

THIS LEGISLATION SHOULD NOT BE PASSED IN ITS PRESENT FORM OR DURING THIS SESSION. ALASKA DOES NOT NEED LEGISLATION THAT WILL VIOLATE BASIC INDIVIDUAL FREEDOMS AND FURTHER DIVIDE OUR STATE ALONG RACIAL LINES.

Senator MURKOWSKI. Thank you.

Our next witness is Mr. Sharpe, conservation director of the Izaak Walton League.

STATEMENT OF MAITLAND SHARPE, CONSERVATION DIRECTOR, IZAAK WALTON LEAGUE OF AMERICA

Mr. SHARPE. Thank you, Senator, Mr. Chairman. I am pleased to have this opportunity to be here today to convey the Izaak Walton League's grave concerns over the potential impacts of S. 2065. The league's concerns focus on fish and wildlife values, resources, but they are triggered by the issue of sovereignty.

We are persuaded that this legislation would substantially strengthen the case for sovereignty, setting the stage for a court ruling or an administrative action that could establish native sovereignty in Alaska.

Establishment of native sovereignty, or indeed incremental steps that would strengthen native claims to sovereign status, are of direct and legitimate concern to the league and other conservation organizations because of the potential impact on fish and wildlife management.

A pattern of tribal sovereignty in Alaska would fragment jurisdiction over fish and wildlife management within the State, legal authority to control management of fish and wildlife, to set seasons and bag limits, issue licenses, and impose penalties for fish and wildlife violations could be divided among nearly 200 sovereign entities.

Such a pattern would undermine the State's ability to implement coordinated, scientific management and conservation of Alaska's fish and wildlife resources and to control abuses of the subsistence taking of fish and wildlife under the Alaska Lands Act.

Fragmented management under a system of sovereignty could also be expected to encourage local overharvest of shared, migratory stocks with potentially severe consequences for Alaska's anadromous fisheries.

In summary, our position is that this bill sets in motion a chain of events that leads toward the establishment of native sovereignty in Alaska. We understand that this bill does not expressly grant sovereignty. We also understand that it breaches the legal barriers to sovereignty that were erected by the Settlement Act and greatly strengthens the case for sovereign status under the Indian Reorganization Act.

In our view, this bill constitutes a clear invitation to sovereignty. It is, in effect, a grant of eligibility for native sovereignty. Because sovereignty could fragment fish and wildlife management and encourage overharvest, we find that this bill poses unnecessary and unacceptable risks to fish and wildlife resources in Alaska. This is so despite the intentions of yourself and the other sponsors and despite the disclaimers contained in section 7 of this bill or in section 8 of H.R. 4162.

We believe that this bill leads to sovereignty by satisfying the conditions for tribal status and Indian country under the Indian Reorganization Act, rather than through the expansion of the scope of native governmental powers.

The disclaimers in section 7 of this bill or section 8 of the House bill, are therefore insufficient to divorce this legislation from the sovereignty issue or to lay to rest our concerns that native sovereignty would be the indirect result of this bill.

In order to achieve your intention and that of the other sponsors of avoiding the sovereignty question and in order to allay our concerns about the bill's impact on fish and wildlife, we would urge you to postpone action on this bill this year. Such a delay until next year would provide time for a more measured consideration of the bill by all concerned parties and a chance to resolve together the many remaining uncertainties about the ultimate effects of the legislation.

If the committee chooses to act on the bill this year, we would urge you to adopt a number of amendments which we believe are required if claims for native sovereignty are not to be enhanced as a result of the bill. We have the text of some suggested amendments attached to the statement.

These amendments are intended to accomplish the essential purposes of S. 2065, protecting the native lands transferred under the Settlement Act, and to avoid those provisions of the bill that promote native sovereignty.

The amendments would expand the land bank to provide the full range of protective immunities for native lands and properties that are sought. They would avoid the dangers of transferring title to native lands to tribal entities or creating new racially defined institutions.

They would modify or eliminate several provisions of the bill, including section 7, that we believe promote sovereignty. They would reserve to Congress the authority to confer native sovereignty in Alaska.

They would leave the Settlement Act intact, preserving the barriers we believe it presents to sovereignty. And last, they would strengthen and encourage the use of the land bank mechanism.

I see I have run over my time. Thank you for the opportunity to be here.

[The prepared statement of Mr. Sharpe follows:]

Statement of Maitland Sharpe
Conservation Director of the
Izaak Walton League of America

Before the
Public Lands, Reserved Water and Resource Conservation Subcommittee
Of the Committee on Energy and Natural Resources

United States Senate
August 4, 1986

Mr. Chairman, my name is Maitland Sharpe; I am the Conservation Director of the Izaak Walton League of America. The Izaak Walton League is a national, membership organization committed to the conservation and wise use of this nation's natural resources. The League has approximately 45,000 members nationwide, of which some 600 reside in Alaska. I am pleased to have this opportunity to appear before you today to convey the League's concern over the potential impact of S. 2065 on the fish and wildlife resources in the State of Alaska.

Earlier this month, the delegates to the Izaak Walton League's national convention adopted a policy statement expressing grave concerns about this bill's impact on conservation, opposing passage of the bill in its current form, and calling for more careful consideration of some of the issues raised by the legislation. (A copy of the full resolution is attached.) The League's concerns focus on fish and wildlife values but are triggered by the issue of sovereignty. We are persuaded that this legislation would substantially strengthen the case for sovereignty, setting the stage for a court ruling or an administrative action that could establish native sovereignty in Alaska.

Despite the intention of the sponsors that the bill remain neutral on the question of sovereignty, we believe this bill would tilt the playing field sharply in favor of those seeking Native sovereignty. We are advised by counsel that, in its current form, this bill would eliminate the legal arguments that the Alaska Native Claims Settlement Act removed the legal foundation for Native sovereignty. At the same time, this bill would strengthen the basis for pursuing claims of Native sovereignty under the Indian Reorganization Act. It would open the way for Native interests to achieve sovereign status through the courts or before the Department of Interior, even if no additional action were taken by the Congress. In addition, the bill would remove the incentives to make use of the Alaska Land Bank -- an important conservation provision of the Alaska National Interest Land Conservation Act which provides tax exemption for Native lands retained in an undeveloped condition.

Establishment of native sovereignty in Alaska -- or indeed, incremental steps that would strengthen native claims to sovereign status -- are of direct concern to the League and other conservation organizations because of the potential impact on fish and wildlife management. A pattern of tribal sovereignty in Alaska would fragment the legal authority over fish and wildlife and jeopardize the coordinated, scientific management and conservation of Alaska's fish and wildlife resources.

The Izaak Walton League does not oppose the purpose of this legislation: to provide for continued Native ownership of and control over the Native corporations and the lands conveyed to them under the Alaska Native Claims Settlement Act. However, issues of the magnitude of those raised by this bill should not be dealt with in haste and uncertainty. Therefore, we urge this committee to defer action on these amendments until next year, leaving time for a measured consideration of the effect of this bill on the sovereignty question and other issues that remain, at present, unresolved.

Our remaining comments address both the sovereignty issue and the Land Bank issue. We again urge that this legislation be postponed until next year, but we propose specific amendatory language to address the sovereignty and Land Bank issues if Congress chooses to act on the bill this year.

THE SOVEREIGNTY ISSUE

We submit that this bill should be thoroughly redrafted or amended because it advances claims to Native sovereignty under the Indian Reorganization Act by enhancing claims that Alaska Natives are eligible for tribal status and that Settlement Act lands can be converted into Indian Country. As a result, the bill poses unacceptable and unnecessary risks to fish and wildlife resources in Alaska.

We appreciate that Section 7 is intended by the sponsors to be an assurance of neutrality on the question of Native sovereignty. However, the disclaimers of Section 7 fail to achieve the intended neutrality and do not prevent this bill from prejudicing the sovereignty question. In fact, the language of Section 7 greatly aggravates the effect of the bill on the sovereignty issue. Because Section 7 applies both to these amendments and to the original Alaska Native Claims Settlement Act of 1971, Section 7 would neatly eliminate the many legal barriers to Native sovereignty that were erected by ANCSA. Rather than protecting the *status quo*, Section 7 would reverse the effects of ANCSA on sovereignty and restore the *status quo ante* as of 1970, prior to the passage of ANCSA.

Nor does the language of Section 8 of the House version of this bill succeed in preventing the bill from tipping the balance in favor of Native sovereignty. Section 8 of H.R. 4162 was redrafted to say that these amendments do not affect the scope of Native governmental powers, if they exist. Yet even this disclaimer is not effective. It fails to address three issues related to sovereignty. First, it fails to address whether these amendments, in conjunction with actions that could be taken under them, will enhance claims of tribal status, which is necessary for sovereignty. Second, it fails to address whether these amendments establish a method by which lands conveyed under the Settlement Act could be converted into Indian Country, which is also necessary for sovereignty. Third, it fails to address whether these amendments enhance the opportunity for sovereignty under the Indian Reorganization Act, despite the disclaimer in section 8.

Any legal discussion of sovereignty focuses on two legal concepts -- tribal status and Indian country -- both conditions for the establishment of sovereignty. Tribal status is necessary because it carries the immunities accorded tribes under federal Indian law, 25 C.F.R. 83.2, the most important of which is immunity from any forms of state civil regulation, particularly taxation and the regulation of natural resources. Indian Country is a necessary ingredient for sovereignty because Indian Country is the jurisdictional land base over which any sovereignty and immunities apply.

The impact of this bill on claims of tribal status and Indian Country is potentially great. Therefore, tribal status, Indian Country and sovereignty should be addressed directly. Simply disclaiming any direct effect on the scope of any existing sovereign powers fails to halt the chain of events leading toward sovereignty that is set in motion by this bill.

We conclude that the bill enhances claims of tribal status and Indian Country. It thereby reverses the thrust of the Settlement Act which is widely perceived to be contrary to tribal status, contrary to Indian Country, and therefore contrary to sovereignty.

Departmental regulations list six criteria for recognition of tribal status: (1) continuous identity as an Indian entity from historical times to the present; (2) a history of dealing with other Indian organizations as an Indian entity; (3) membership which resides in a specific area; (4) continuous assertion of tribal political influence or other authority; (5)

identifiable criteria for membership and an identifiable procedure for governing tribal members; and (6) membership composed of Native Americans who are not members of another tribe or a terminated tribe. 25 C.F.R. 83.1 et seq.

The elements of the legal test as to whether lands owned by Alaska Natives are Indian Country is: (1) that they be geographically distinct areas inhabited primarily by Natives; (2) that legal title to the land either be held by the United States or held in fee by the Indian tribe; and (3) that there be federal supervision of the area and of the Alaska Natives living within it. See United States v. McGowan, 303 U.S. 535 (1938); United States v. Martine, 442 F.2d 1022, 1024 (10th Cir. 1971); United States v. Levesque, 681 F.2d 75 (1st Cir. 1982).

We believe the Settlement Act eliminated the conditions for tribal status, Indian Country, and therefore sovereignty, in several respects. It did so primarily through Section 2 of the Act which proscribes creation of: (1) racially defined institutions, rights, privileges or obligations; (2) reservations, wardship and trusteeship; (3) special categories of property or tax privileges; and (4) special relationships between the state and federal governments with respect to Alaska Natives. In addition, the Settlement Act:

(1) unilaterally dissolved all reservations except Matlakatla;
(2) provided for state taxation of Native lands after 1991;

(3) established taxable corporations to receive Native selected lands, rather than reservations; full title to those lands was conveyed to the corporations, rather than retaining the land in federal ownership in trust for the Natives, as occurs in the case of reservations;

(4) enrolled Natives as shareholders of transferable stock in Native corporations, rather than giving them racially based tribal membership that would be nontransferable.

The overall scheme of the Settlement Act was to adopt a corporate model and convey lands in fee to the corporations, rather than adopt a reservation model and retain lands in trust.

Viewed as a whole, the Act therefore --

(1) rejected racially defined tribal status, membership, or admission of new members with respect to Native Corporations;

(2) rejected racially defined tribal rights, privileges, and powers related to sovereignty, and racially defined institutions that could exercise such rights, privileges, and powers over people, resources, and property;

(3) defeated claims that lands conveyed under the Settlement Act are a jurisdictional base over which to exercise sovereignty;

(4) defeated claims of federal supervision, trusteeship and wardship; it fully emancipated Alaska Natives, rather than keeping them under a federal guardianship;

(5) negated claims that Native lands are a special category of land immune from state and local regulation, including taxation.

All of these considerations lead us to conclude that the Settlement Act eliminated any government-to-government, special relationship that existed prior to the Settlement Act and eliminated any possibility for establishing that relationship under the Indian Reorganization Act. Accordingly, state regulations over many matters, from timber harvesting practices, to fish and game, to water quality, to health practices, taxation and civil court jurisdiction apply to Native lands.

The 1991 amendments potentially affect these legal consequences of the Settlement Act by establishing numerous immunities, including tax immunity, for Native lands and Native people and by establishing "qualified transfer entities" as racially defined and controlled institutions. Transferring title to the lands now held by the Native corporations to these tribal, "transferee entities" would establish the land base necessary for the existence of Indian Country. Assuming that these entities were tribal councils, they could then apply for tribal status under Department of Interior regulations, draft constitutions and by-laws under the Indian Reorganization Act, and exercise sovereignty over lands transferred to the entities by the corporations. They would have the necessary combination of tribal status, tribal powers, and Indian Country, notwithstanding the disclaimer in Section 8 of the House-passed bill. Furthermore, we understand that the Secretary could even take the land in trust from a transferee entity and proclaim a new reservation under the Indian Reorganization Act (IRA). The 11th Circuit recently held that the IRA authorizes the Secretary to take land in trust where the tribe has an interest beforehand.

The consequences of tribal status, Indian Country, and sovereignty would be numerous. There could be nearly 200 tribal governments. State civil court jurisdiction could be affected. State health and safety codes could be affected. State regulation of fish and wildlife habitat could be affected. State regulation of fish and game harvest could be affected. State and local taxation could be affected.

The League's concerns focus on the potential impact of Native sovereignty on Alaska's fish and wildlife resources. Establishment of Native sovereignty in Alaska would fragment jurisdiction over fish and wildlife management within the State. Legal authority to control management of fish and wildlife, set seasons and bag limits, isssue licenses,and impose penalties for fish and wildlife violations could be divided among nearly 200 sovereign entities. Such a pattern would undermine the State's ability to implement coordinated, scientific management and conservation of Alaska's fish and wildlife resources and to control abuses of the subsistence taking of fish and wildlife under the Alaska Lands Act (ANILCA). Fragmented management under a system of sovereignty could also be expected to encourage local overharvest of shared, migratory stocks -- with potentially severe consequences for Alaska's anadromous fisheries.

THE ALASKA LAND BANK

Section 907 of the Alaska National Interest Lands Conservation Act (ANILCA) provides most of the immunities that are sought by this legislation. It allows Land Bank Agreements whereby Native Corporations can enter into 10-year, non-development agreements with the Secretary and in return receive immunity from local, state, and federal taxation of the property, protection from adverse possession and foreclosure, and assistance in fire protection, trespass control, and resource management.

In return the Secretary receives a covenant that the Native Corporation will not dispose of the land, that the land will be managed compatibly with federal or state lands affected by adjoining Native land, and that the agencies will have access for agency purposes including conservation of fish and wildlife.

The Alaska Federation of Natives hae argued that Land Bank agreements are difficult to negotiate. However, the Department has adopted a form Land Bank agreement which requires no negotiating. Section 907 requires the Secretary to accept these form agreements whenever the Native corporation offers the covenant described in the statute and the form. Therefore, section 907 is automatic and self-implementing. The lack of Land Bank agreements to date reflects two facts. First, Native lands are immune from taxation until 1991, and second, section 907 automatically granted to all Native corporations interim benefits of Land Bank protection until the end of 1983 without even requiring an agreement.

The bill does provide two additional protections to Native lands beyond those afforded by Land Bank agreements -- protection from Chapter 11 bankruptcy and protection of lands from the effects of corporate dissolutions. We submit that these protections should be afforded by amending section 907, rather than by eliminating the incentives in the Land Bank agreements and the state, federal, and public benefits achieved by those agreements.

Therefore, our suggested amendments address the Land Bank program in section 907 of the Alaska National Interest Lands Conservation Act.

SUMMARY

In conclusion, our position is that this bill sets in motion a chain of events that leads toward the establishment of Native sovereignty in Alaska. We understand that this bill does not expressly grant sovereignty. We also understand that it breaches the legal barriers to sovereignty erected by the Settlement Act and greatly strengthens the case for sovereign status under the Indian Reorganization Act. In our view, this bill constitutes an clear invitation to sovereignty; it is, in effect, a grant of eligibility for Native sovereignty.

Because sovereignty could fragment fish and wildlife management and encourage overharvest, we find that this bill poses unnecessary and unacceptable risks to fish and wildlife resources in Alaska. This is so despite the intentions of the sponsors and despite the disclaimers contained in Section 7 of S. 2065 and Section 8 of H.R. 4162. As we have shown, this bill leads to sovereignty by satisfying the conditions for tribal status and Indian Country under the Indian Reorganization Act, rather than through the expansion of the scope of Native governmental powers. The disclaimers in Section 7 of this bill, or in Section 8 of the house bill, are therefore insufficient to divorce this legislation from the sovereignty issue or to lay to rest our concerns that Native sovereignty would be the indirect result of this bill.

In order to achieve the sponsors' intention of avoiding the sovereignty question and to allay our concerns about the bill's impact on fish and wildlife, we would urge you to postpone action on this bill until next year. Such a delay would provide time for a measured consideration of the bill by all concerned parties and a chance to resolve the many uncertainties about the ultimate effects of this legislation. Postponing action until 1987 would still provide ample time before the 1991 deadline to address the problems that gave rise to this bill. We would hope that it would make it possible for the concerned parties to work out, together, a measure that would avoid the sovereignty issue, while providing the needed protections for continued Native ownership of, and control over, the assets and lands conveyed to them under the Alaska Native Claims Settlement Act.

If the Committee chooses to act on S. 2065 this year, we would urge you to adopt a number of amendments which we believe are required if claims for Native sovereignty are not to be enhanced as a result of this legislation. The text of those amendments is attached to this statement.

These amendments are intended to accomplish the essential purpose of S. 2065 -- protecting the Native lands and assets transfered under the Settlement Act -- and to avoid those provisions of the bill that promote Native sovereignty. These amendments would expand the ANILCA Land Bank to provide the full range of protective immunities for Native lands and property sought by the Alaska Federation of Natives in this bill. They would avoid the dangers of transferring title to Native lands to tribal entities or creating new racially defined institutions. They would modify or eliminate several provisions of the bill, including Section 7, that promote sovereignty. They would leave the Settlement Act intact, preserving the barriers we believe it presents to sovereignty. And last, they would strengthen and encourage use of the Land Bank mechanism established by ANILCA. We believe these amendments offer a prudent and equitable means of accomplishing the central purposes of this bill while minimizing the risks that the legislation will lead to the establishment of Native sovereignty.

I thank you for the opportunity to appear here today to present these views.

AMENDMENTS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), which extinguished all aboriginal claims and titles of the Indians, Aleuts, and Eskimos native to Alaska. In exchange, the Natives received $962 million and 40 million acres of selected lands, which were to be held and managed by Native regional and village corporations for the benefit of their shareholders. In enacting ANCSA, Congress refrained from establishing reservations, tribal governments, or a trustee relationship with the federal government -- establishing a new system of corporate, rather than tribal, institutions.

Today, legislation to amend ANCSA is pending before Congress. The announced purpose of this legislation is to insure that the lands and assets of the Native corporations remain in Native ownership and control. To that end, pending bills, S. 2065 and H.R. 4162, would extend indefinitely the current prohibitions against sale or transfer of stock in the Native corporations.

Those provisions appear to be equitable and in keeping with the original purpose of ANCSA, they are not expected to have any significant effect on the conservation and use of Alaska lands and resources. However, other provisions of the pending legislation which could materially strengthen the legal basis for assertions of native sovereignty, hold very significant implications for resource conservation and management in Alaska.

The Izaak Walton League of American, assembled in convention in French Lick, Indiana, July 7-10, 1986, finds that establishment of tribal sovereignty in Alaska would fragment the legal authority over fish and wildlife management within the state. Dividing the legal authority to control management of fish and wildlife, set seasons and bag limits, issue licenses, and impose civil and criminal penalties with respect to fish and wildlife among scores of separate sovereign entities, would jeopardize the coordinated scientific management and conservation of Alaska's fish and wildlife resources.

The Izaak Walton League therefore urges Congress to reject any amendments to the Alaska Native Claims Settlement Act or other statutes, that would in any way strengthen or advance native claims to sovereign status. The League does not oppose the central purpose of the pending legislation: to provide for continued Native ownership of and control over the Native corporations and the lands conveyed to them under the ANCSA. However, the League does strenuously oppose several provisions, found in Sections 7, 5, and 10 of the bills as introduced, that are not germane to the basic purposes of the legislation and that would advance legal arguments for the existence of Native tribal sovereignty. We call upon Congress to delete those provisions from the bills, or to add language sufficient to prevent the legislation from in any way furthering claims of Native sovereignty. The League further urges the Congress to reject the proposed tax exemption for undeveloped lands owned by Native corporations (Section 10) in that it would merely duplicate the function of the Alaska Land Bank provision of the Alaska National Interest Lands Act without the degree of conservation protection afforded under the Land Bank agreements. Finally, the League finds that the issues connected with tribal sovereignty in Alaska are of such weight and complexity that they should be dealt with directly and openly, through separate legislation, and following full public debate.

SUGGESTED AMENDMENTS TO S. 2065

SECTION 1: CONGRESSIONAL FINDINGS

Suggested Amendment:

In section 1, strike section (b) and strike subsection (c).

Rationale:

Subsection (b) finds the corporate model adopted by ANCSA is inappropriate. This finding may be used in later legal or political arguments to promote sovereignty, since this finding would promote claims that tribal status under 25 C.F.R. 83.1 *et seq*. and creation of reservations under the Indian Reorganization Act, 25 U.S.C. 465 and 476, would be more appropriate models. Therefore, this finding should be deleted if Congress seeks to avoid promoting sovereignty.

Subsection (c) criticizes the value and effectiveness of the settlement. It is not relevant to any of the substantive provisions of the bill. It should therefore be stricken. ANCSA settled Native claims in a scheme designed to promote finality. The settlement should not take on the appearance of being an ongoing implementation; the implication of an ongoing, special relationship between Alaska Natives and the Federal Government is inconsistent with ANCSA and promotes sovereignty.

Suggested Amendment:

In section 1, subsection (d), amend to read as follows:

> "(A) provide the stockholders of each Native Corporation an opportunity to manage the benefits derived from the settlement in the manner which they determine is best suited to their particular circumstances, except that such opportunity shall not include Native sovereignty, tribal status, or recognition of Native lands as Indian country unless specifically authorized by Congress.

Rationale:

Here the concern is over sovereignty arising through actions by the Secretary under regulations governing tribal status and the Indian Reorganization Act. The original phrase in paragraph (A), "implement the settlement in the manner which they determine is best suited to their particular circumstances and needs, including but not limited to ...", is too loosely drafted. It facilitates future legal and political arguments that Congress granted open ended discretion on the part of Natives to seek tribal status and sovereignty, and it therefore undercuts the portions of the Settlement Act that prevent such claims. With sovereignty being an issue, we oppose inclusion of such loose language, and we instead recognize that important questions of sovereignty, tribal status and Indian Country be dealt with solely by Congress, rather than by the Secretary.

Therefore, we suggest the amendment so as to state a Congressional intent to allow flexibility without sovereignty, tribal status, or creation of Indian country or preemption of state law unless specifically provided by Congress.

Our suggested amendment deletes reference to Natives born after 1971 from the Congressional findings. We do not delete the substantive provisions of the bill that allow such Natives to receive shares from the respective corporations. We recommend this method of drafting because the original language in this paragraph contributes to the appearance that the settlement is an ongoing process involving a special relationship between Alaska Natives and the State and Federal Governments by which Congress seeks to continually allow Natives born after 1971 to participate. ANCSA specifically provided no such special relationships were to exist. Allowing them contributes to the sovereignty issue.

We also suggest an amendment to delete the portion of paragraph (b) that says that Congress finds that the corporate model may be inappropriate for holding lands. This finding relates to the provisions of the bill dealing with qualified transferee entities. Because these entities will likely be tribal councils, this finding raises the issues of Indian Country, state jurisdiction over corporate lands as opposed to Indian Country, and sovereignty. Leaving this Congressional finding in the bill allows it to become an underpinning for legal and political arguments that sovereignty exists or should be permitted and that special relationships survived ANCSA, whereas the corporate model clearly implies otherwise.

Suggested Amendment:

Strike section 1, subsection (f).

Rationale:

Finding that ANCSA and these amendments are Indian legislation opens questions of statutory construction of ANCSA and these amendments to the judicial guideline that ambiguities in Indian legislation are construed in favor of the Indians. Whether ANCSA is Indian legislation, public land legislation or other legislation has been the subject of dispute. It is presently codified in Title 43 as public land leglisation.

The extent to which it is Indian legislation is important for purposes of the issue of how ambiguities are treated in matters of statutory construction. ANCSA is a complex statute dealing with public land law, Native claims and aboriginal rights, state selections under the Alaska Statehood Act, conservation statutes governing national wildlife refuges and national parks, national defense withdrawals, the National Petroleum Reserve, tax law and state corporate law. Therefore, it is best to let the courts decide on a case-by-case basis the extent to which ANCSA and these amendments are Indian legislation and the extent to which the ambiguities guideline applies. For Congress to make a wholesale determination that the Settlement Act and these amendments are all Indian legislation preempts what ought to be role of the courts, and doing so oversimplifies the complex nature of the Settlement Act.

The ambiguities guideline also is part of the ongoing special relationship between Indians and the federal government. It's foundation is in the trust responsibility. The Settlement Act sought to avoid such special relationships and responsibilities.

Strengthening reliance on the "amibiguities guideline" is particularly risky in light of the potential for future arguments over sovereignty. Doing so facilitates arguments that the existence or potential for sovereignty was left ambiguous by the Settlement Act, and therefore that if sovereignty was not expressly prohibited by Congress, it can be created by the Secretary.

SECTION 5: QUALIFIED TRANSFEREE ENTITIES

Suggested Amendment:

We urge that section 5 be deleted.

Rationale:

Section 5 allows Native Corporations to transfer their land and other assets to "qualified transferee entities". In all likelihood, these would be tribal councils, according to the Native American Rights Fund. The bill provides that membership in these entities could be restricted to Natives and descendants of Natives.

It is hardly necessary to beat a dead horse, but it should be obvious that transferee entities are likely to be tribal councils. Therefore the sovereignty issue arises in section 5. Since membership will be racially defined, since the entities will possess numerous immunities from state and federal law, since tribal councils possessing land would provide a jurisdictional land base, since the Secretary could recognize tribal status, and since tribal councils could seek Secretarial approval of sovereign powers under the Indian Reorganization Act, this section enhances sovereignty. We are left with the conclusion that the main purpose of section 5 is to merge the land base with tribal councils and thereby create a jurisdictional land base over which to exercise sovereignty. It should be deleted.

SECTION 7: DISCLAIMER OF TRIBAL GOVERNMENT

Section 7 of the bill adds a new section 7c to the Settlement Act Act to say that nothing in the Settlement Act or in these agreements shall affect the scope of Native governmental powers, if any exist.

Suggested Amendment:

We urge that, because of the sovereignty issue and the potential effects of this bill on it through the authority of the Secretary to recognize tribal status and approve constitutions under the Indian Reorganization Act, section 7c be amended as follows:

> "Sec. 7c. The Secretary of the Interior may not construe Alaska Natives or any organizations composed wholly or primarily of Alaska Natives to be tribes for purposes of Federal Indian Law except as they are specifically recognized as tribes by Congress. Without the approval of Congress specifically authorizing the exercise of Native sovereign governmental powers in Alaska, the Secretary of the Interior may not approve any Alaska Native constitutions under the Indian Reorganization Act, as amended, or otherwise recognize Alaska Native governmental powers, if such constitutions or powers would preempt or be concurrent with the jurisdiction of the State of Alaska."

Explanation:

This suggested language effectively requires Congress, rather than the Secretary of the Interior and the Courts, to deal first with issues of sovereignty. This is appropriate because of the many risks that this bill will enhance claims of tribal status and Native sovereignty.

SECTION 10: IMMUNITIES FOR NATIVE LAND

Suggested Amendment:

Amend section 10 to read as follows:

"Section 907(c)(2) of the Alaska National Interest Lands Conservation Act is amended to read as follows:

'(2) As to Native Corporations and all other persons or groups that have received or will receive lands or interests in lands therein pursuant to the Alaska Native Claims Settlement Act or sections 901 and 902 of this title, the following immunities are hereby granted; provided that none of these immunities shall be construed to be a grant of, or implied approval of, or any affect on claims of tribal status, tribal powers, or Native sovereignty --

(A) adverse possession;

(B) real property taxes and assessments by the United States, the State, or any political subdivision of the State: Provided that such immunity shall cease if the lands involved are leased or developed, as such terms are used in section 21(d) of the Alaska Native Claims Settlement Act;

(C) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native Group or any officer, director, or stockholder of any such Corporation or Group;

(D) judgment resulting from any claim based upon or arising under title 11 of the United States Code relating to bankruptcy (or any successor statute), other insolvency or maratorium laws, or other laws affecting creditor's rights generally; and

(E) involuntary distribution or conveyance related to the involuntary dissolution of the Native Corporation.

On or before January 31 of each year beginning the fourth year after the date of enactment of this Act, the Secretary shall publish in the Federal Register and in at least three newspapers of general circulation in the State the perentage of conveyed land entitlement which each Native Corporation or Group has elected to include in the Alaska Land Bank Program as of the end of the preceeding year.'

Rationale:

This suggested amendment saves the incentive of the

Alaska Land Bank provisions of the Alaska National Interest Lands Conservation Act and satisfies the desire of the Alaska Federation of Natives that Native lands be protected from dissolution of the corporations and bankruptcy or creditor proceedings.

The original language in the bill undercuts the Land Bank by giving the incentives of tax and other immunities free and without the State, Federal and public benefits that accrue under the Land Bank.

Senator MURKOWSKI. Thank you very much, Mr. Sharpe.

You indicated your recommendation for delay. We have had a number of hearings. To my knowledge, this is the first official position of the Izaak Walton League. The year 1991 is coming and it has to be addressed.

You reflect on your concerns of sovereignty. You have heard the discussion this morning. You have heard the opening statements by Senator Stevens and myself. You know that the hearing process brings about the input necessary to develop corrective changes from the original legislation as it was presented. And what we are doing here is obviously the process where you get the input through the hearings.

And while your testimony, I am sure, is related on your evaluation of the amendment standing alone, in view of the communication that has been passed back and forth concerning the attitude of myself and Senator Stevens, do you have any reason to have any second thoughts in your recommendation with regard to delay? Because we focus, obviously, on the issue of sovereignty.

Mr. SHARPE. Two points, Mr. Chairman. First, I appreciate your position expressed in your opening statement and as well, your concern for the urgency of this issue for getting it resolved in a timely fashion to permit all the things that must take place before 1991.

From our point of view, on the other hand, we have come to the issue somewhat late. I think that is true of many of the parties that are truly parties in interest here. We came somewhat belatedly to the understanding, to the realization, that we were parties in interest here, that there were major stakes for outdoor recreation and for fish and wildlife and for conservation in this proposed legislation.

It concerns matters, and for many of us arcane matters, of Indian law, matters on which it takes some time to get ourselves up to speed. It has not been easy to uphold our end of this discussion or this debate, and certainly it has taken some time to do so. I regret that we are coming in belatedly, but I do think that a delay until sometime next year would permit the kind of reasoned and measured discussion that in fact Senator Stevens was proposing to Assistant Secretary Horn.

The second point is that in fact we are much encouraged by the position on the question of sovereignty, the sensitivity to our concerns over sovereignty, displayed in your opening statement and indeed in your resolve to produce a bill, a set of amendments, that is sovereignty-neutral.

However, I would say that the disclaimers that we have seen so far—both section 7 of the Senate bill and now section 8 of the House bill—which were intended to be fully effective disclaimers of the bill's impact on sovereignty are in our view not effective in avoiding strengthening the case for sovereignty.

Senator MURKOWSKI. Well, Mr. Sharpe, your organization testified, I believe in April, and there was testimony from the Alaska Outdoor Council. It would be appreciated during the 10 days or 2 weeks that the hearing record is open, if you would care to, indicate for the record what provisions you feel specifically are needed so that you can indicate under what terms you might support the legislation. Because delaying it does not resolve the ultimate fact that we are going to have to address it. If we do not address it now, it is going to have to be addressed again.

What the situation in the House may be we do not know, but we know it will be substantially different. And that may benefit the State of Alaska and it may detract from the State of Alaska; we do not know. I am talking about the interest of all Alaskans, Native and non-Native alike.

So if you would be inclined to indicate under what terms you could accept this legislation or specifically what changes would have to be made, because in your testimony you have dwelt for the most part on the issue of sovereignty which is an appropriate concern.

Mr. SHARPE. We have attached to the testimony as the second appendix a number of suggested specific amendments to the bill and language discussing and explaining the rationale for those amendments. As you will see they too, no surprises here, focus on the issue of sovereignty and the various elements in the bill that we think will work, unless they are amended or changed, to promote sovereignty.

Finally I just wanted to say that we continue, despite what we have heard here today concerning disclaimers in order to achieve a sovereignty-neutral bill, sovereignty-neutral amendments, we continue to fear a bill that is sovereignty-neutral in its language but that nevertheless promotes sovereignty in its effects.

I think that is the situation we have in the House bill, and I think it is going to take some extraordinarily careful drafting and perhaps a protracted iterative process before the parties at interest to this legislation are satisfied.

Senator MURKOWSK. Have you had an opportunity to meet with the attorneys for the Alaska Federation for Indians?

Mr. SHARPE. No; I have not.

Senator MURKOWSKI. Would you be willing to have your people meet with them?

Mr. SHARPE. We would be quite willing to try to get our most capable counsel together with their most capable counsel and that of the Department of the Interior and other parties. It is exactly that sort of process that we think is now needed.

Senator MURKOWSKI. Thank you, Mr. Sharpe.

I am interested in Mr. Andrews' statement with regard to the extinguishment of claims, and so forth and so on. I fail to understand the relationship between these amendments and anything else that is being given.

Let me run you through what I recall are the issues. We are talking about 1991 and extending that nontransferrability beyond that date. The Native people are the only recipients of the stock, so it is an issue that only reflects them. It is not that Congress is doing an additional expansion of claims. It is simply saying all right, if you want to restrict your stock beyond 1991, the Natives are the only ones that hold the stock, is it not their decision? Does the outdoor counsel have a problem with that?

Mr. ANDREWS. Senator, as far as the immunability of stock, transfer of stock only to Native people, that is of no concern to us.

Senator MURKOWSKI. No concern?

Mr. ANDREWS. No.

Senator MURKOWSKI. All right. Let me address the second issue. The second issue involves those born after 1971. And the Federal Government is not going to make any more land; they are not going to make any more money available. The question is the Native people have indicated in testimony they want the right to share their stock with their children. But it would be through dilution of the existing stock. Why is there any concern over that?

Mr. ANDREWS. That is no concern to us either, Senator.

Senator MURKOWSKI. All right. The next one is the issue of taxation. And the law provides currently that the land is taxable 20 years after it is transferred. And the concern expressed in the hearing process by the Native community is that so much of the land is subsistence land that if it was taxed, how would they possibly meet the tax levy without selling the land? And that would defeat the whole concept of subsistence because really that is all a lot of the land is capable of generating.

So the proposal now is to change it and say if it generates revenue, then it is taxable.

Mr. ANDREWS. That is a concern: tax exemption.

Senator MURKOWSKI. Well, now just a minute, now. How do you draw the conclusion tax exemption? I did not say tax exemption. I said you pay taxes on it if it generates revenue. Now you said, well, that implies that the rest of it is tax exempt. But if it does not generate revenues, how can you justify assessing taxes?

Mr. ANDREWS. Well for example I guess we have to have a fairly narrow definition then of what constitutes generating revenue.

Senator MURKOWSKI. We sure do.

Mr. ANDREWS. A lot of this subsistence land you are talking about is leased to commercial guiding operations. That is a commercial operation.

Senator MURKOWSKI. It should be taxed, should it not?

Mr. ANDREWS. It should be taxed.

But we are talking about some very large acreage. I think the number one problem here is that there is a lack of information, one; and there is a lot of confusion among Alaskans as to just what section 10 means.

Senator MURKOWSKI. Well of course that is the whole reason for the hearings, to theoretically bring this out. And that is why we are having this discussion because I am trying to clear up some of this confusion.

Mr. ANDREWS. Right.

Senator MURKOWSKI. And we heard testimony from one of the witnesses this morning that in the Copper River land, people are giving $10 to walk across it, why it is generating revenue and it ought to be taxed if there is a taxing entity. That seems fair. You are suggesting if a large plot of land is used to support guiding services, then it generates revenue and should be taxable if there is a taxing entity, and I agree with you. We need to address definitions, and that is what we have asked for from representatives of the Governor's office and from others as we attempt to proceed with the legislation.

But I am trying to bring to your attention, if I may, the necessity of how we can make it work in harmony with the interest of Alaskans as opposed to assuming it is no good and it cannot work. I am using obviously the vernacular here and generalizing, but I think it is important to try and reflect that what we need here is probably adequate definitions on taxation because, as you say, I do not assume you oppose the taxation concept if the definitions are satisfactory so it is fair and equitable.

Mr. **Andrews**. When ANCSA was passed in 1971 and the land bank provision was provided, we thought at that time, the layperson thinking on that, is that this was going to take care of those kind of problems. As I have heard this morning, that has not worked out too well. There is a lot of problems with that.

Senator **Murkowski**. We are left with a problem, and the problem is simply this: In a few years, for some of the land that was transferred early on out, 20 years will be up. Should that land be taxed if it does not produce any revenue?

Mr. **Andrews**. But we have an awful lot of folks in Alaska that think that we have got 44½ million acres tax-free in perpetuity. And I think that misconception, if that is what it is, needs to be rectified.

Senator **Murkowski**. Well, this is what we are attempting to do. We have proposed that if it generates revenues, it should be taxed.

Mr. **Andrews**. I think we need a closer definition also because those improvements that may be built or constructed to facilitate subsistence activities, if we are talking about major landing strips and things like that, we had better define that.

Senator **Murkowski**. Well, I would like to think we are kind of on the same wavelength as far as trying to put together something appropriate to address the specific issues.

And lastly the one that gets us into the sovereignty is the transfer of assets to other entities. But should not a village corporation have the right, if it so determines, to change its structure if it wants to acknowledge that the corporation has not worked, as long as it does not initiate a situation where it becomes solely sovereign?

Mr. **Andrews**. Well, as a layperson I thought those corporations all the time had that authority to do it, but apparently I am not correct. I thought they could change their corporate structure.

Senator **Murkowski**. They can under State law, but there is the question under the Federal authority of the Alaska Native land claim settlement. That is why this provision is in there. And this is the provision that has gotten so much examination by Alaskans, as it should.

But I guess my question is: Should not a village corporation, if you are going to use an example, have the right, if they want to, to admit that corporation status did not work, the tribal association is much more encompassing, they feel more comfortable with it, should they not have the right to change that status under Federal law?

Mr. **Andrews**. I have no problem with that. But if you transfer all the assets to a 100 percent Native entity, then you are giving strength to the paper trail to a sovereignty issue.

Senator **Murkowski**. Well, that is correct. That is what we are attempting to foreclose. We are saying OK, should they not have the right to change their status if they want? But in so doing, they should not have the authority under that provision or that amendment to achieve a sovereign status.

Mr. ANDREWS. I am not sure what kind of an answer you want out of me.

Senator MURKOWSKI. Well, you are giving the testimony. I am just trying to go over the points so that we can put them in a perspective that I think has been evidenced by the testimony of the 262 witnesses that I have heard. And that is what it boils down to; it boils down to those four basic issues plus the position of the Department of Interior regarding Federal liability. And that is it in a nutshell. That is 1991.

Mr. ANDREWS. Our main concern, as I have stated a number of times with the sovereignty issue, concerns the statewide management of fish and wildlife.

Senator MURKOWSKI. That is certainly a concern of mine.

Mr. ANDREWS. We feel that there should be one statewide regulatory commission. We have over 68, I think, local advisory committees and 7 regional councils. We have the most democratic system in the world for fish and game management. Everybody has an input to it; you are not limited to 5 minutes. They can talk for hours, if they get it all put together.

So we feel that we have a very good system in the State and it has worked well since statehood.

Senator MURKOWSKI. I agree with you.

Well, what we would appreciate your doing is examining the opening statement, the various discussions, and see what provisions you cannot live with or what recommendations you would care to make because, again, the record will remain open for a period of 2 weeks.

Mr. ANDREWS. I appreciate that, Senator , and we do have two weeks, am I correct, to have more input?

Senator MURKOWSKI. That is correct.

That concludes panel 5. We have been going straight since 10 o'clock. It is 1 o'clock now. The court reporter needs a break and I am not going to take a break for lunch. We are going to continue after the court reporter has been accommodated. So I suspect we will be out 10, 12 minutes in recess.

[Recess taken.]

Senator MURKOWSKI. We will reconvene the hearing. I again want to thank the reporter for her indulgence as we attempt to proceed with probably more than we bargained for, trying to take up four bills in one day. But we will proceed, anyway.

Panel No. 6: Ms. Elizabeth Johnston, vice president and general counsel for the Bristol Bay Native Corp., accompanied by someone who is seldom seen in Washington, Mr. Steve Silver; also Mr. Roy Huhndorf, president, Cook Inlet Region Corp.—we welcome Mr. Huhndorf; Mr. Willie Kasayulie, chairman of the Alaska Native Coalition; and Mr. Chris McNeil, senior vice president and general counsel for Sealaska Corp. Mr. Chris McNeil, it is a pleasure to welcome you here.

And, I guess, Elizabeth Johnston, you are first. It is a pleasure to have a lady on our panel. You are the second one today. Please proceed.

STATEMENT OF ELIZABETH B. JOHNSTON, VICE PRESIDENT, BRISTOL BAY NATIVE CORP., ACCOMPANIED BY STEVE SILVER, WASHINGTON COUNSEL

Ms. JOHNSTON. Mr. Chairman, thank you for this opportunity to testify.

Senator MURKOWSKI. Excuse me. I would ask that those gentlemen who would like to be seated in the back that are kibbutzing or conversing as the case may be, there is plenty of room. So do not feel that you have to stand up. The television cameras do not focus that far back. [Laughter.]

Please proceed.

Ms. JOHNSTON. Thank you, Mr. Chairman. I am Elizabeth Johnston, vice president of Bristol Bay Native Corp. With me today, also, is Steve Silver, our Washington counsel.

Bristol Bay Native Corp. supports Senate bill 2065 because it creates the opportunity for continued stock restrictions, it provides land protections, and it permits shareholders to make the basic choices. I cannot stress enough how important stock restrictions are. They are the key to continued Native control of ANCSA corporations.

That this should be so comes as no surprise. Our daily newspapers are filled with example after example of corporate takeovers. Less than 20 percent of the targeted corporations are successful in repelling raiders. Less than 20 percent are successful in remaining independent. Clearly, the antitakeover devices found in corporate law are inadequate protection to prevent takeovers. They cannot assure continued Native control. The opportunity for stock restrictions to continue beyond 1991 is needed. Only Congress can create this opportunity.

Equally important in this bill are the proposed land protections. They would protect undeveloped land from real property taxes. In other words, subsistence lands would not be taxed. Also, these same lands would be protected from squatters' rights and from seizure for the payment of certain debts. Continued ownership of the land beyond 1991 is crucial to the Native peoples. The land protections in section 10 of this bill are the key to a just settlement.

However, there is one provision of Senate bill 2065 which BB&C cannot support. That is section 9. This section would substantially enlarge village corporations power to prevent development. Presently, under the 1971 Alaska Native Claims Settlement Act, a village corporation has consent power over subsurface development only if it occurs within the boundaries of the Native village. Section 9 would substantially increase the scope of the village corporations' power. Enlarging that power could easily siphon off moneys from section 7(i) sharing.

First, because development which does not occur reduces the revenues to be shared. Second, because the village corporations, as they have legitimately done with section 14(f), will extract a price for granting consent. This price will also reduce revenues to be shared under section 7(i).

The economic losers will be at-large shareholders, village corporations which are not located near valuable subsurface, and all regional corporations. Bristol Bay Native Corp. agrees with the Aleut

Corp., Koniag, Inc., and Cook Inlet Region, Inc., that section 9 should be deleted from the legislation.

In conclusion, BBNC supports the Native control and land protection provisions in the bill. We urge passage of Senate bill 2065 this year. The time legislation is needed is now. It is time for the corporations to turn their resources to the tremendous tasks ahead: the necessary corporate planning for 1991, including shareholder education, disclosure materials and financial reserves.

For example, Bristol Bay Native Corp. plans to commit 2 years to shareholder education and disclosure prior to the crucial vote on restrictions. Assuming continued restrictions are approved, BBNC would need several fiscal cycles to set aside the reserves with which to honor dissenters' rights.

None of this can be accomplished in a short time and none can begin without the framework of specific legislation. In terms of corporate planning, the time for the legislation is now. In terms of the Native peoples' legitimate needs, the time for legislation is now.

Thank you.

[The prepared statement of Ms. Johnston follows:]

BB NC Bristol Bay Native Corporation
800 CORDOVA / P.O. BOX 100220 / ANCHORAGE, ALASKA 99510 / (907) 278-3602
TELECOPY (907) 276-3924

TESTIMONY ON S. 2065 BEFORE THE UNITED STATES SENATE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS

August 4, 1986

By

Elizabeth B. Johnston, Vice President
Bristol Bay Native Corporation

Mr. Chairman, thank you for this opportunity to testify today. I am Elizabeth B. Johnston, Vice President of Bristol Bay Native Corporation. I have submitted a more complete statement which I ask to be printed in the record along with the comments I am making.

Bristol Bay Native Corporation supports S. 2065 because it creates the opportunity for continued stock restrictions, it provides land protections, and it permits shareholders to make the basic choices.

I cannot stress enough how important stock restrictions are. They are the key to continued Native control of ANCSA corporations.

That this should be so comes as no surprise. Our daily newspapers are filled with example after example of corporate takeovers. Less than 20 percent of the targeted corporations are successful in repelling raiders. Less than 20 percent are successful in remaining independent. Clearly, the anti-takeover devices found in corporate law are inadequate protection. They cannot assure continued Native control.

The opportunity for stock restrictions to continue beyond 1991 is needed. Only Congress can create this opportunity.

Equally important in this Bill are the proposed land protections. They would protect undeveloped land from real property taxes. In other words, subsistence lands would not be taxed. Also, these same lands would be protected from squatters' rights and from seizure for the payment of certain debts. Continued ownership of the land beyond 1991 is crucial to the Native peoples. The land protections contained in section 10 of this Bill are key to a just settlement.

However, there is one provision of S. 2065 which we cannot support. That is section 9. This section would substantially enlarge village corporations power to prevent development.

Presently, a village corporation has consent power over subsurface development only if it occurs within the boundaries of the Native village. Section 9 would substantially increase the scope of the village corporations' power. Enlarging it could easily siphon off monies from section 7(i) sharing. First, because development which does not occur reduces the revenues to be shared. Second, because the village corporations, as they have done with section 14(f), will extract a price for granting consent. This price will also reduce revenues to be shared under section 7(i).

The economic losers will be at-large shareholders, village corporations which are not located near valuable subsurface, and all regional corporations. Bristol Bay Native Corporation agrees with The Aleut Corporation, Koniag, Inc., and Cook Inlet Region, Inc. that section 9 should be deleted from the legislation.

In conclusion, Bristol Bay Native Corporation supports the Native control and land protection provisions in the Bill. We urge the passage of S. 2065 this year.

The legislation is needed now, not in the sweet by-and-by. It is time for the corporations to turn their resources to the tremendous tasks ahead: the necessary corporate planning for 1991, including shareholder education, disclosure materials and financial reserves. For example, Bristol Bay Native Corporation plans to commit two years to shareholder education and disclosure prior to the crucial vote on stock restrictions. Assuming continued restrictions are approved, Bristol Bay Native Corporation would need several fiscal cycles to set aside the reserves with which to honor dissenters' rights.

So none of this can be accomplished in a short time. And none can begin without the framework of specific legislation. In terms of corporate planning, the time for legislation is now. In terms of the Native peoples' legitimate needs, the time for legislation is now.

Thank you very much.

APPENDIX I

Additional comments by Bristol Bay Native Corporation on S. 2065.

1. Undeveloped lands. As previously mentioned, the proposed legislation would exempt undeveloped lands from real property taxes, squatters rights and seizure for the payment of certain debts. Previous testimony has reflected a concern about the boundary between developed and undeveloped. Those testifying seemed unaware that State law already contains appropriate definitions. They are as follows:

> (m) For the purpose of determining property exempt under (a)(7) of this section, the following definitions apply to terms used in 43 U.S.C. 1620(d) unless superseded by applicable federal law:
>
> (1) "developed" means a purposeful modification of the property from its original state that effectuates a condition of gainful and productive present use without further substantial modification; surveying, construction of roads, providing utilities or other similar actions normally considered to be component parts of the development process, but that do not create the condition described in this paragraph, do not constitute a developed state within the meaning of this paragraph; developed property, in order to remove the exemption, must be developed for purposes other than exploration, and be limited to the smallest practicable tract of the property actually used in the developed state;
>
> (2) "exploration" means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources;
>
> (3) "lease" means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor; with respect to a lease that conveys rights of exploration and development, this exemption shall continue with respect to that portion of the leased tract that is used solely for the purpose of exploration.
>
> (n) If property or an interest in property that is determined not to be exempt under (a)(7) of this

> section reverts to an undeveloped state, or if the lease is terminated, the exemption shall be granted, subject to the provisions of (a)(7) and (m) of this section. AS 29.45.030 (m) and (n).

The State Legislature has spoken. Additional legislation in this area is not warranted.

2. State's Power to Condemn. Section 10 includes a provision clarifying that Native lands can be condemned for public purposes in accordance with applicable State laws. The provision is included to ensure that nothing in this set of ANCSA amendments is construed as a change to the status quo.

However, various Alaska Native Corporations have experienced land condemnation problems, resulting in the government's failure to compensate fairly for the value of subsurface estates.

For example, the State of Alaska has been able to gain ownership of valuable gravel deposits at a fraction of their value. By routing roads over significant gravel resources, the State has condemned lands and valued them as road beds rather than as more expensive gravel deposits. The State has offered compensation to Native corporations for these gravel resources for as little as one percent of the value claimed by the Native corporations.

For example, the State of Alaska has even requested gravel resources without compensation based on a lack of funding. Native corporations should not have to contribute to the construction of a public facility which is clearly the responsibility of the State.

For example, government fails to recognize separate and distinct values for surface and subsurface estates when condemning Native corporation lands, particularly where ownership is split between village and regional corporations. A separate valuation for subsurface estate is also important even when the surface and subsurface are commonly owned by a Native corporation. Since the Alaska Native Claims Settlement Act requires that 70 percent of the revenues derived from Native corporations' subsurface estate be placed in the 7(i) revenue pool, it is critical that a precise valuation of the subsurface be made.

For example, the State of Alaska condemns and uses the surface in such a manner as to preclude access to the subsurface, such as in road building or in the preservation of surface resources, yet does not compensate for the subsurface estate.

The problem of under compensating Native corporations for raw materials derived from condemnation is unique to rural areas. Native corporations holding land in rural areas appear to be treated differently from land owners in the urban areas. Congress should continue monitoring government activities relating to condemnation of Native corporation lands and take corrective action, if necessary.

Senator MURKOWSKI. Thank you very much, Ms. Johnston.

Mr. Huhndorf, Mr Roy Huhndorf, president, Cook Inlet Region, Corporation.

STATEMENT OF ROY M. HUHNDORF, PRESIDENT, COOK INLET REGION, INC.

Mr. HUHNDORF. Thank you, Mr. Chairman. My name is Roy Huhndorf, and I am president of Cook Inlet Region, Inc. I appreciate this opportunity to testify on S. 2065 today.

I first want to begin by saying that I have submitted written testimony, and I will summarize briefly for the record.

Senator MURKOWSKI. It will be entered into the record.

Mr. HUHNDORF. I want to start by expressing my appreciation to the U.S. Congress. Over the past 15 years, Congress has been sensitive and willing to help Native corporations, the Native community, cope with problems that have come up in the 1971 act. In this particular instance, I would like to thank you and Senator Stevens for your efforts on this 1991 amendments package.

CIRI, with one exception, supports the legislation, as submitted. That exception is section 9, the transfer of subsurface estate to village corporations. We think that that section would confuse a situation that has been carefully worked out after years of litigation to define the 7(i) revenue distribution scheme: Instead of dealing with 12 corporations, we will now deal with more than 200, if this particular provision remains in the bill as written, especially as it has passed the House.

Another section that we would like to address that is not included in the current passed House bill and we would urge be included in the Senate bill is the provision that would allow some freedom from, we believe, inadvertent taxation under the Tax Code in instances where assets would be spun off to shareholders.

For example, in the instance where CIRI might spin off part of its assets in the form of a corporation directly to its shareholders so that they could realize some liquidity, penalty taxation might be inadvertently triggered. I do not think Congress intends that. We would like to get liquidity to our shareholders, and this provision would provide some problems, would trigger taxation that would penalize the corporation for attempting to do that.

So we would like to see some language, and that language was included in the AFN version of the bill, the very extensive work that the AFN did to clarify the bill that was originally introduced.

The other thing we would like to do, Mr. Chairman, is submit to the staff for their review a memorandum on some of the business-related items that were included in the AFN draft but were inadvertently dropped from the House bill. These technical amendments would clarify and render consistent some of the business provisions of this package of amendments.

We are trying here to delicately balance the uniqueness of Native corporations and business corporations, and the courts have often expressed some confusion over which standard to follow. And so we think it is very important that the legislation be extremely clear on some of these provisions that were included in the original AFN draft. So we will be submitting a memorandum that outlines some of these changes that the staff and the committee can consider.

Beyond that, I just want to express again my appreciation for your help in I think solving a problem that is a very real one for the Native community and will be upon us sooner rather than later, and I urge you to continue thinking about moving the bill ahead this year. I think it is important that we have the lead time to take care of the problem of 1991.

And I want to thank you for this opportunity, again, to testify.

[The prepared statement and a subsequent submitted of Mr. Huhndorf follows:]

Testimony of
Roy M. Huhndorf, President
Cook Inlet Region, Inc.
before the
Subcommittee on Public Lands and Reserved Water
U.S. Senate
on S.B. 2065
August 4, 1986

Thank you Mr. Chairman and members of the Committee for this opportunity to testify before you today. My name is Roy Huhndorf and I am the President of Cook Inlet Region, Inc., ("CIRI") one of the 12 Alaska-based regional corporations created under the Alaska Native Claims Settlement Act ("ANCSA").

These hearings mark an historic moment in the relationship between Alaska Natives and the United States Congress. For nearly 15 years now the Alaska Native community has been involved in one of the most daring experiments in this country's two centuries of American Indian policy. Since 1971, the organization of Alaska Native entities around the corporate model, has caused a rethinking of organization forms, the criteria by which to determine their appropriateness and even the purposes of American Native communities. We now have an opportunity to look back on what we have learned and what modifications, if any, should be made within the broad outlines of the 1971 settlement.

There has been, over the last two years, a remarkable debate and discussion within the Native community in Alaska, a debate and discussion that has included close ties with our congressional delegation. As a result of that debate, we have determined, mutually, that the diversity so clearly represented among the various Alaska Native communities should be reflected in the architecture of any change which may be made to the 1971 statute.

There is little question that for many villages and some regions, consistent adherence to a corporate form has not provided the best way to reach communal and federal goals. In these communities, the thrust into the business environment was too sudden. There was not the management, nor the resources, to cope with so sharp a break with the old ways. In some instances, the experience of the last 15 years has taught us that there must be opportunities to strengthen the more traditional ways and to temper implementation of the settlement with more communal traditions than are available under the strict corporate form.

For Cook Inlet Region, Inc., where I have been president for most of the period since passage of the Act, we have embraced the corporate form with a good deal of enthusiasm. We have organized to seek business opportunities, to strengthen the corporation, to think through how CIRI can be a successful business entity that can contribute to the lives of its shareholders and the economy of the state. Congress has helped us immensely, approving the Cook Inlet land settlement in 1976 and in other legislation.

But there is a need for additional Congressional action, even for the Native corporations that appear strong. If we are to negotiate the 1991 transition smoothly, there must be an orderly way for shareholders to make their views known about the future their corporations should take. There should be sufficient time so that management and boards can adequately provide shareholders with information so that they can make an informed choice.

Cook Inlet Region has undergone a careful study to determine the choices which it thinks should be available to its shareholders. What we have determined is that there is a need to allow more flexibility so that shareholders could realize the value of a portion of their equity interest in the corporation without triggering abrupt loss of control as is possible under the current situation. This proposed legislation provides for better ways of mediating between varied interests expressed by the Native community by respecting the choices that will be made by our corporations' shareholders.

What we have learned, painstakingly, is a lesson that has long been known by the most successful business corporations in the country, namely that who the shareholders are and what constitutes their special desires dictates a broad spectrum of ways in which businesses can be structured. Family corporations have different goals and different strategies in terms of voting structure than do very widely held corporations. We have studied many of these structures to learn what enabling legislation we need for the levels of stock ownership and control that is needed for our shareholders.

The process of informing our shareholders is continuing at CIRI. Over the past two years, we have undertaken a complex educational program with our shareholders. Throughout, we have solicited their views on the post-1991 options. As the proposed legislation evolves, we will continue to have small shareholder meetings in various geographical areas. We will publish, through our newsletter, articles and other information that will serve to educate shareholders on the sophisticated choices they will have to make. The principle of choice embraced in the legislation is only valuable if the boards and shareholders of the Native corporations have the proper opportunity, through knowledge and informed advise, to exercise the choice.

CIRI, which played an integral part in the AFN planning process is generally pleased with the legislation as it has passed the House, though we have limited, but strong concerns. By and large, these concerns arise where the bill, as passed, varies in important ways from the AFN draft, a draft that reflected sensitive compromises among the Native Corporations.

These concerns arise, I think, because Cook Inlet Region, more than most Native Corporations, is seeking to employ, to the greatest extent possible, the tools that corporate law has made available to American businesses. We do not want to be prejudiced in our use of these tools as we build strong economic entities and provide rewards for shareholders. Yet CIRI is seeking to accomplish this goal in a context that respects the overall objectives of ANCSA and, in particular, the need to preserve Native control, so long as desired by shareholders. To accomplish this feat - trying to be as much like a great American corporation while enhancing Nativeness - we must be meticulously correct about the relationship between the niceties of corporate law and the special requirements of ANCSA.

For these reasons, we are listing in a separate Memorandum, a group of specific elements of this harmonization process that were included in the AFN draft, but have been, through final revisions in the House, dropped from the bill. All of these have to do with the protocol of corporate law and the exactness required when managing corporate affairs in a large institution. We believe that these should be acceptable changes since they reflect the AFN consensus. We ask permission of the chair to submit this written memorandum by the end of this week.

For example, in one area there are problems created if corporations decide to restructure their affairs by transferring assets to a qualified transferee entity, or by spinning-off certain assets to a corporation or partnership that is wholly-owned by the Regional Corporation and/or its shareholders. The national policy embodied in this legislation is that such transfers should be facilitated. To carry out this policy, it is necessary to provide that assets can be transferred in such a restructuring without adverse financial consequences to the transferring corporation and to the owners of the transferee entity under the tax law. Because existing law would impose such adverse consequences, it is necessary to provide exceptions for these restructuring transfers by Regional Corporations.

This approach simply recognizes that the way Congress ANCSA originally mandated organizational structure may not always have been appropriate, and Regional Corporations should have a chance, without adverse financial consequences flowing from tax law, to change this structure.

The AFN draft of June 3, which preceded the House Bill, contained language which CIRI believes dealt appropriately with these issues. We urge the Committee to include this language in the Senate Bill. This language is included in our supplemental submission to the Committee.

The complexities of emerging as a full-fledged corporation from the cocoon of ANCSA, and doing so with integrity and financial acumen, is more difficult than one would initially anticipate. Much of the difficulty of this legislation would be eliminated if Native Corporations were not, necessarily, involved in the schizophrenic apple-orange quandary of whether they are Native entities or corporations to be treated like all other corporations under state and federal law. While we welcome this dual role, we ask for your patience and assistance now and in the future as we work out the pioneering difficulties necessary to harmonize competing goals. Because of the ambition of CIRI for its shareholders, we have tried to think through many of these corporate issues. In doing so we have noted a few places where the language of the Bill, as it all fits together, would interfere with our ability to progress as a business corporation serving our shareholders. In our supplemental memorandum, we have proposed ways of dealing with these few issues in ways which we believe are not inconsistent with aspirations of other Native Corporations. Undoubtedly, there will be the need for further refinements in the future as CIRI and other corporations seek to implement the post-1991 options.

In addition, we have a list of changes that we believe should be made and that are technical corrections to deal with errors that may have occurred accidentally in the last moments of preparing the House markup. I again ask permission to provide this Memorandum on technical changes, to be submitted by the end of the week.

As I hope I have made clear, Cook Inlet Region is strongly supportive of the aims of the legislation. There is one other provision of the bill, however, that we cannot endorse. Section 12 of the legislation, which would authorize the transfer of title to the subsurface to village entities, is a provision that we would ask you carefully to consider.

While the legislation should provide flexibility for the business entities that Congress made the trustees of the ANCSA settlement, it must not upset the delicate relationship among the regions and villages. It regrettably took many years and divisive costly litigation to resolve the issues left unclarified in ANCSA concerning the management and development of the subsurface, and the division of the revenues from such development.

We are therefore quite concerned about Section 12. We feel that it is in large part unnecessary because the protections it seeks to offer are in large measure already available. But more importantly, the provision would irreconcilably alter the relationships created by the finely-honed agreement known as the 7(i) settlement agreement and would likely lead to a new round of protracted litigation. It would also provide a "free ride" to those villages that would continue to participate in distributions of development proceeds earned by others, while prohibiting development under their own lands, development that could benefit themselves as well as others.

We recognize that the legislative process is not yet over for the Congress or for Cook Inlet Region. We are confident that with concerted effort on the part of all Regional and Village Corporations, the few issues still under discussion will swiftly be resolved. We have been fortunate to have a delegation from Alaska and a Congress that has been encouraging of our efforts and supportive of the needs of our people. We think the proposed amendments to the Alaska Native Claims Settlement Act represent another example of that cooperation. We have learned from the first stage of this great experiment, and we look forward, with the aid of this legislation, to a future that has a greater promise of success.

I thank you for this opportunity to comment. I will be happy to answer any questions.

37/066

COOK INLET REGION, INC.

August 14, 1986

Subcommittee on Public Lands
Senate Energy and Natural Resources Committee
Dirksen Senate Office Building
Room 358
Washington, DC 20510

Re: S. 2065

Gentlemen:

When I testified before the Subcommittee on August 4 concerning S. 2065 (Alaska Native Claims Settlement Act Amendments of 1986), I indicated that Cook Inlet Region, Inc. ("CIRI") desired to submit a supplemental memorandum in connection with specific concerns which it has with the bill approved by the House of Representatives (the "House Bill"). On behalf of CIRI, I am now submitting this letter with two attachments to address CIRI's concerns with the House Bill.

In considering CIRI's comments, it is important to understand our perspective. We are a Regional Corporation that has sought to fulfill ANCSA's apparent mandate to develop a strong economic base as an American business corporation.[1]

Given our background, we are particularly concerned that the legislation allow us to continue our development as a successful business corporation. We do not want to be bound by provisions that would interfere with our obtaining credit or discourage other corporations from doing business with us. There are other Regional corporations which, to varying extents, have chosen the path we have chosen, and we believe they will share many of our concerns. We recognize that there are other Native Corporations with circumstances different from ours and that have chosen paths different from ours. Therefore, where we have identified problems with the legislation, we have tried to propose solutions that would permit us to pursue our objectives without interfering with the ability of differently situated Corporations to pursue different objectives.

---

[1] Over the last five years our net income has been as follows: $12,171,573 -- 1981; $15,649,305 -- 1982; $16,597,131 -- 1983; $18,610,155 -- 1984; $25,782,140 -- 1985. In addition to receiving income from oil and gas production (which is shared among all Alaska Regional Corporations pursuant to the Section 7(i) Settlement Agreement), we have profitable investments in Alaska oilfield services, in real estate in Alaska and in many other states, and as the managing partner of a partnership owning the ABC-affiliate television station in New Haven, Connecticut.

CIRI BUILDING 2525 "C" STREET P.O. BOX 93330 ANCHORAGE, ALASKA 99509-3330
(907) 274-8638 TELECOPIER (907) 279-8836 TELEX 090 26-465

This letter addresses substantive concerns in three areas: the ability of Native Corporations to be creditworthy and to use financial markets efficiently (which includes the ability of Regional Corporations to issue stock with normal protection for equity participants that their interest cannot be unfairly diminished); the ability to take corporate actions efficiently and pursuant to clear statutory rules that minimize the potential for litigation; and the ability to engage in permitted restructuring without adverse tax consequences. Following are CIRI's comments on substantive issues, organized in accordance with these three areas of concern.[2] Unless otherwise stated, statutory references are to sections of ANCSA as they would be amended by the House Bill.

Issues Concerning Credit-Worthiness and the Ability of Regional Corporations to Use Financial Markets Efficiently.

1. Section 7b, which would be added to ANCSA by the House Bill, permits Native Corporations to convey any or all of their assets to a "qualified transferee entity." The House Bill makes clear that a dissolved Native Corporation may only transfer "assets remaining after satisfaction of outstanding debts". No such limitation is expressed for other Native Corporations. CIRI believes this was an oversight. CIRI does not believe that it was the intent of Section 7b to allow a Native Corporation to transfer all of its assets to a new entity owned by its shareholders, without first satisfying its liabilities or making the transfer subject to its liabilities. Ordinarily such a transfer would violate state laws prohibiting fraudulent conveyances and would thus be void. The existing language, however, might be read as permitting such a transfer. We are concerned that the issue created by this language would make it difficult for us and for other Regional Corporations to obtain credit on an unsecured basis, to enter into agreements to purchase a business, or to enter into other normal commercial transactions if Regional Corporations have the power to walk away from their obligations by transferring all of their assets, without consideration, to a qualified transferee entity. CIRI has thus proposed language to make it clear that a transfer to a qualified transferee entity can only be made if the transferor (i) has satisfied all of its liabilities, (ii) makes the transfer subject to any unsatisfied liabilities, or (iii) retains sufficient assets to satisfy any liabilities not assumed by the transferee. CIRI also believes that once a Corporation has alienable common stock outstanding (which might be issued under section 7(g)(3) while there is still Native common stock) it should be able to amend its articles of incorporation to foreclose

---

[2] CIRI is also submitting two attachments to this letter. The first attachment sets forth language which CIRI suggests to resolve the substantive concerns described in the letter. The second attachment addresses technical issues and typographical errors in the House Bill and suggests language to deal with these matters. Many of these technical issues arose when the House Committee on Interior and Insular Affairs departed from the draft that the Alaska Federation of Natives had approved and submitted to the Committee (the "AFN Draft"). Where the problems resulted from departures from the AFN Draft, we have noted that in the attachment.

any transfers to a qualified transferee entity under section 7b. Creating an appropriate market for alienable common stock may well require that the Corporation be able to remove the cloud that the value of an investment in alienable stock could be impaired by a transfer to a qualified transferee entity. Thus CIRI is proposing an amendment to section 7(g)(3) that would allow the shareholders of a Corporation issuing alienable stock to cut off the Corporation's ability to make transfers of assets under section 7b.

2. Subsection 21(d) would be amended by the House Bill to extend the immunities provided by that subsection to Native Corporation lands that "are not developed or leased to third parties or are used solely for purposes of exploration". Such lands, among other immunities, would be made exempt from bankruptcy judgment and could not be assigned or leased by a trustee or receiver for the Native Corporation. While these provisions may be appropriate for many corporations, they appear to be inappropriate for any Corporation that chooses to be a "public company" by issuing alienable common stock or by removing the restrictions on alienation of Native common stock. For such companies, federal bankruptcy law and the role that the Securities and Exchange Commission plays in the bankruptcy of a public company, provide important protection for shareholders as well as creditors. Corporations choosing this path should be able, by amending their articles of incorporation, to make the immunities offered by Section 21(d)(1)(A)(iii) and 21(d)(1)(E) inapplicable. Thus the proposed amendment to Section 7(g)(3) discussed in Comment 1 above would also permit the shareholders of a Native Corporation choosing to have alienable stock to forego these "immunities", which are inappropriate to a public company.

Additionally, CIRI is concerned that oil and gas or mining companies which agree to explore a Regional Corporation's land for subsurface resources need to be assured that the remedy of specific performance will be available to enforce the Regional Corporation's obligation to convey or lease land on which resources are discovered. The subsection 21(d) amendment language does not deal specifically with the remedy of specific performance, but may raise doubts about its availability. Since such doubts will interfere with a Native Corporation's ability to develop its lands, the language should be clarified to remove this ambiguity.

3. Section 7(h)(6)(D) provides that the holders of 15% of a Corporation's Native common stock (one-third in connection with terminating restrictions on alienation) can initiate corporate action on such matters as issuing additional shares of stock to elders and persons born after ANCSA, authorizing the issuance of new classes of stock, and approving a transfer of assets to a qualified transferee entity. This procedure is quite different from that provided by most state corporate law, where only the Board of Directors can initiate action on such fundamental corporate actions, and the Board is consequently accountable for its actions. While CIRI does not object to this provision, it believes that a corporation which chooses to issue alienable common stock under Section 7(g)(3) should be permitted to amend its Articles so as to make these petition rights no longer applicable. If a corporation has stock other than Native common stock outstanding, it may want to avoid giving special petition rights to the holders of

Native common stock that are not shared by other stockholders. Moreover, a corporation that has chosen to have alienable stock has chosen a particular path of business development that may cause it to want to be governed by the rules of corporate law that are familiar to investors, which include placing upon the directors the authority and responsibility of initiating fundamental corporate changes. Thus in the amendment ot Section 7(g)(3) discussed in Comment 1 above, CIRI is proposing the addition of language to deal with this issue.

Issues Concerning the Ability of Corporations to Act Efficiently and Pursuant to Clear Statutory Rules.

4. Section 7(h)(6)(C) requires, in connection with shareholder action on certain matters, including removal of the restrictions on alienation, that "the proxy statement and related proxy material if required under applicable law", shall be delivered or sent "not less than fifty nor more than sixty days before the date of the meeting". This language can be read as requiring any proxy material to be sent to shareholders at least fifty days prior to the meeting. While it is reasonable that a proxy statement should have to be sent at least fifty days in advance of the meeting, there should be no prohibition against sending supplemental soliciting material closer to the date of the meeting. It has been CIRI's experience, and we believe the experience of other Regional Corporations and indeed of most widely-held American corporations, that supplemental soliciting material relatively close to the date of the meeting may be necessary to secure an appropriate level of shareholder participation. We have therefore proposed language to deal with this issue.

5. Section 7(h)(3)(B) gives a Regional Corporation the right to purchase, for fair market value, stock that "would be transferred by devise or inheritance to a person not a Native or a descendant of a Native". Unless the legislation specifies a time period during which this right can be exercised, the provision will be a source of litigation over whether a Regional Corporation is too late in exercising the right or whether a shareholder's title to stock is clouded by a Regional Corporation's right to repurchase. CIRI's only interest here is certainty. We would suggest adding language that gives this right of purchase to the Regional Corporation for 90 days after it receives notice of a proposed transfer upon death to a person who is neither a Native nor a descendant of a Native. Additionally, the language of this paragraph needs to be amended to make clear that it refers to Native common stock (the stock that is subject to restrictions on alienation). Since it is clearly not intended that other, alienable stock should be subject upon death to this right of the Corporation to repurchase, the language should be modified to avoid creating an ambiguity.

Issues Concerning the Ability of Native Corporations to Engage in Permitted Restructuring Without Adverse Tax Consequences.

6. The AFN Draft contained language which would permit certain restructuring transfers of Native Corporation assets to be made without adverse tax consequences. This language was omitted from the House Bill. CIRI believes it is very important that this language, which we have set forth in the first attachment to this letter, be included in the final Act. As the House Bill and the Committee Report make clear, Congress in this legislation is recognizing that the corporate structures created in ANCSA may be inappropriate, and Congress is providing means for Corporations to restructure their assets if they choose to do so. These provisions, however, may be of little value unless provision is made that these restructuring transfers of assets can be accomplished without the adverse tax consequences to the Corporation and its shareholders that would ordinarily apply to such transactions under federal tax law. Most of the kinds of restructuring transactions that would be contemplated by Native Corporations, such as transfers to a qualified transferee entity under Section 7b, would not likely qualify as tax-free transactions under federal tax law. Failing to be tax-free would mean that the transferring Regional Corporation would be required to recognize gain equal to the difference between the fair market value of the property transferred and the Corporation's adjusted basis for such property. The shareholders of the Regional Corporation, who would be the owners of the transferee entity, would have dividend income based on the fair market value of the distributed property in accordance with their respective interests in the transferee entity. Since, as Congress is acknowledging in this legislation, ANCSA may have resulted in assets being structured inappropriately, Native Corporations should not have to pay a tax penalty on transactions that simply restructure assets into more appropriate entities. CIRI believes that the provisions proposed in the AFN Draft to prevent these adverse tax consequences are necessary if Native Corporations are to be able to effect the restructuring of their assets which this legislation contemplates.

Conclusion

CIRI appreciates the Committee's consideration of these issues. Crafting legislation that provides appropriately for the different situations and aspirations of the many Alaska Native Corporations is difficult work. We believe, however, that these suggestions will assist the Committee in structuring an Act that will provide suitable vehicles for the future development of all Alaska Native Corporations.

Sincerely,

Roy M. Huhndorf by R. C. [illegible]

Roy M. Huhndorf

First Attachment to Letter of
Cook Inlet Region, Inc.

Set forth below is the statutory language which CIRI suggests for resolving the substantive issues described in its letter.

Concern Identified in Comment 1.

Section 7b(a) should be revised to read as follows, with brackets indicating deletions and underlining indicating language inserted:

> "Any Native Corporation or the stockholders of a Native Corporation which has been dissolved involuntarily under applicable law is hereby authorized to convey any or all of its assets, including the title to the surface or subsurface of land, to a qualified transferee entity as provided in this section. In cases where a Native Corporation has been involuntarily dissolved under State law, a State court of appropriate jurisdiction, upon petition of no less than twenty-five of the former stockholders of such corporation, may order the transfer of real property assets and such other assets [remaining after satisfaction of outstanding debts] upon an affirmative vote of individuals who were shareholders in the dissolved corporation on a resolution as provided in Section 7(h)(6) or 7(c) without requiring that the resolution be adopted by the Board of Directors. No conveyance shall be made by any Native Corporation under this section unless --
>
> (i) the transferor Native Corporation has satisfied all of its outstanding obligations;
>
> (ii) the transfer is made subject to any obligations that have not been satisfied and the transferee assumes and agrees to be responsible for any such unsatisfied obligations; or
>
> (iii) the transferor retains sufficient assets to satisfy any liabilities not assumed by the transferee."

Section 7(g)(3) should be amended by adding thereto a new subparagraph (J).

"(J) Any Regional Corporation which amends its articles of incorporation to permit the issuance of shares of stock which are not subject to the alienability restrictions provided for in paragraph (1) of subsection (h) of this section, may further amend its articles of incorporation to provide any or all of the following --

(i) prohibition of any transfer by such Regional Corporation to a qualified transferee entity as provided in section 7b;

(ii) making inapplicable to such Regional Corporation the immunities provided in section 21(d)(1)(A)(iii) and 21(d)(1)(E); and

(iii) making inapplicable to such Regional Corporation the provisions of section 7(h)(6)(D);

which amendment to the articles of incorporation shall govern any such Regional Corporation notwithstanding any other provisions of law, and which amendment, if it so provides, may be made non-amendable by any further action of the Regional Corporation."

Concern Identified in the Second Paragraph of Comment 2.

Subsection 21(d) should be amended by adding a new subparagraph (F) to paragraph (1) to read as follows:

> "(F) Nothing contained in this subsection shall prevent the remedy of specific performance, where it would be available under general equitable principles, from being used to enforce any obligation of a Regional Corporation to convey or lease land or interests therein."

Concern Identified in Comment 4.

Section 7(h)(6)(C) should be amended to read as follows:

> "(C) A written or printed notice (including a proxy statement if required under applicable law), setting forth the proposal or summary of the changes to be effected, shall be delivered by hand or sent by first class mail to each stockholder of record entitled to vote not less than fifty nor

more than sixty days before the date of the meeting at the address of such stockholder as it appears on the records of the corporation."

Concern Identified in Comment 5.

Section 7(h)(3)(B) should be amended to read as follows, with underlining indicating language inserted:

> "(B) In the event that Native common stock would be transferred by devise or inheritance to a person not a Native or a descendant of a Native, the Regional Corporation shall have the right, exercisable at any time within ninety days after it receives notice of the proposal transfer, to purchase such stock for its fair market value."

Concern Identified in Comment 6.

Section 7b should be amended by adding subsection (h) reading as follows:

> "(h)(1) If a Regional Corporation distributes assets or stock to a qualified transferee entity pursuant to this section, or makes any such distribution to a partnership, corporation, or other entity which, upon completion of the transaction, is one hundred per centum owned by the Regional Corporation and/or its stockholders, neither the distribution nor the receipt of such assets or stock shall subject the transferor, the transferee, or its stockholders to any form of Federal, state or local taxation.
>
> "(2) The basis to the transferee of any asset or stock distributed to an entity described in this subsection shall be the same as it would be in the hands of the transferor.
>
> "(3) Sections 21(c) and 21(d) shall continue to apply to any asset distributed to an entity described in this subsection and to any asset owned by a corporation the stock of which is distributed to an entity described in this subsection and to lands received by a Native Corporation under an exchange pursuant to section 22(f).".

Second Attachment to
Letter of Cook Inlet Region, Inc.

Technical issues and typographical errors in the House Bill (H.R. 4162) are set forth below in their order of appearance in the Bill. Unless otherwise stated, statutory references are to sections of ANCSA.

1. Section 7(g)(3)(H). For consistency with other references, the first reference to "subsection (m)" should be to "subsection (m) of this section".

2. Section 7(h)(4)(A) and (B). The limitation in (B) that prevents a Regional Corporation from purchasing shares of Native common stock when the Corporation is unable to pay its debts as they become due, should be made applicable regardless of whether payment is made out of earned surplus or net profits. This provision was handled correctly in the previous AFN draft, but appears to have been changed in redrafting. The simplest solution would be to insert the limitation in (A) so that the last phrase of (A) would read: "any or all of its Native common stock then issued and outstanding, except when the corporation is unable to pay its debts as they become due in the usual course of business." The limitation clause would then be deleted from (B).

3. Section 7(h)(5). This paragraph provides that "Native common stock transferred through inheritance to a person who is not a Native shall not carry voting rights." This provision should be changed to read: "Native common stock transferred through inheritance to a person who is neither a Native nor a descendant of a Native shall not carry voting rights." This problem did not exist in the prior AFN draft, since that draft prohibited transfers through inheritance to persons who are neither Natives nor descendants of Natives, but permitted descendants of Natives who received stock through inheritance to vote that stock. In redrafting, the paragraph appears to have been changed unintentionally to prevent voting by descendants of Natives who receive Native common stock through inheritance.

4. Section 7(h)(6)(A)(iv). The reference to "paragraph (B)" should be to "subparagraph (F)". This error resulted because what was subparagraph (B) of the AFN draft is now subparagraph (F) of the House Bill. The reference to "paragraph (B)" makes no sense, while "subparagraph (F)" contains the language to which reference is intended.

5. Section 7(h)(6)(C), (D), and (F). These three subsections set out requirements that a Regional Corporation, in some circumstances, will not be able to meet. Subparagraph (C) requires that the proxy statement notifying stockholders of a meeting to act on such matters as removing restrictions on alienation and providing for dissenters' rights shall be sent not less than 50 nor more than 60 days prior to such meeting. Subparagraph (D) provides that if a Corporation receives a petition to provide dissenters' rights in the event of a stockholder vote resulting in continuing the restrictions on alienation, signed by the holders of at least 15% of the shares of Native common stock, the Corporation must submit such resolution to a vote of its stockholders. Subparagraph (F) provides that dissenters' rights will be afforded to stockholders only if "contemporaneously with" the vote on removing restrictions on alienation, the stockholders approve a resolution providing for dissenters' rights. If a Regional Corporation gives 60 days notice of a meeting to vote on removing the restrictions on alienation, and stockholders begin seeking signatures to a petition for a resolution on dissenters' rights, the necessary signatures may not be obtained until shortly before the meeting, in which event it would not be possible to give at least 50 days notice of a vote on dissenters' rights without postponing the vote on alienability to a time more than 60 days after the proxy statement on this matter was originally sent to stockholders. This conundrum can be solved for a Regional Corporation, and the procedure made workable, by making the following changes in subparagraphs (C) and (D):

> At the end of subparagraph (C), insert the following sentence: "If the Board of Directors of a Regional Corporation determines, for quorum purposes or otherwise, that it is necessary to postpone or adjourn the date of a previously noticed meeting, it may, by giving notice to stockholders, set a new date not more than thirty days later than the original date without being required to send stockholders a new notice or proxy statement containing the proposal or a summary thereof, but if the new date that is established is more than thirty

days after the original date, a notice or proxy statement containing the proposal or a summary thereof shall be delivered or sent to stockholders not less than thirty days nor more than forty-five days prior to the new meeting date."

The first sentence of subparagraph (D) should also be amended by inserting the underlined language at the end thereof: "With respect to any amendment or resolution described in subparagraph (A) of this paragraph, if the holders of at least 15 per centum or, in the case of an amendment to terminate restrictions on the alienability of Native common stock, one-third of the outstanding shares of Native common stock entitled to be voted petition the board of directors to adopt and submit such amendment or resolution to the vote of the stockholders, the board of directors shall adopt a resolution to that effect and submit it to the stockholders as provided in this paragraph, provided, however, that in the event of a petition concerning a resolution pursuant to subparagraph (A)(iv) of this paragraph, the Corporation shall only be required to submit such a resolution to a vote if the petition is received at least ten days prior to the date on which any stockholders meeting has been scheduled to vote on an amendment to terminate restrictions on alienability."

6. Section 7(h)(6)(D). This subparagraph provides that state proxy rules shall apply to the solicitation of signatures on shareholder petitions. Corporations which have chosen to issue alienable stock under section 7(g)(3) while retaining Native common stock, may have become subject to federal proxy rules, and those rules should be applicable for such corporations. The penultimate sentence of the subparagraph should therefore be amended by inserting the following underlined language at the end thereof: "The procedural and disclosure requirements pertaining to the solicitation of proxies under State law shall govern solicitation of signatures on any such petition, except that the requirements of federal law shall apply with respect to any Regional Corporation with a class of equity securities registered pursuant to the Securities Exchange Act of 1934 (48 Stat. 881), as amended."

7. Section 7(h)(6)(F). The phrase "of Native common stock", which was in the previous AFN draft, should be reinserted, so that holders of Native common stock who also own alienable stock are not allowed to exercise dissenters' rights

with respect to the alienable stock. Dissenters' rights, of course, serve no purpose with respect to the alienable stock. The first sentence of subparagraph (F) would thus be amended, with the insertion of the underlined language, to read as follows: "If the result of a stockholder vote under this paragraph is the continuation of the restrictions against alienation of Native common stock, a stockholder who voted in favor of termination of the restriction may demand, and receive payment from the corporation for all of his or her shares of Native common stock, but only if, contemporaneously with such vote, the stockholders approve a resolution providing for such right."

8. Section 7(h)(6)(G). The references to section 7a(f)(2) and section 7a(f)(3) do not work as a technical matter. Section 7a(f)(2) provides that Native common stock shall be valued as restricted stock "having the same restrictions for the same period made applicable to the stock by the vote". Under the 7(h)(6) procedure, no period of restriction is made applicable by the vote. The stock simply remains restricted for an indefinite period of time until stockholders vote to remove restrictions. Moreover, the form of payment is specified principally in section 7a(f)(2), not in (f)(3) as subparagraph (G) assumes. Also, the provisions should be "and/or", as is provided in Section 7a(f)(2). Finally, under the section 7(h)(6) procedure, interest on a note should begin after termination of the restrictions on alienation is voted down, not after a vote is taken to continue such restrictions. The solution for all these issues is to insert the underlined language in subparagraph (G) so that it reads as follows:

> "A resolution adopted pursuant to subparagraph (F) of this paragraph may provide that Native common stock shall be valued on the basis set forth in section 7a(f)(2), except that the language after the comma in section 7a(f)(2)(A) shall be disregarded, and/or that the form of payment to dissenting stockholders shall be as provided in section 7a(f)(2) and in section 7a(f)(3), except that notwithstanding the language of section 7a(f)(3)(A) interest shall commence on the date termination of the restrictions on alienation was voted on but not approved."

9. Section 7b(f)(2). In the second sentence the phrase "and as a condition of" should be inserted after "Prior to", in order to make clear that failure to agree to be bound by the section 7(i) agreement and to waive sovereign immunity

invalidates a transfer to a qualified transferee entity. This language was in the prior AFN draft.

10. Section 7b(f)(2)(A). The language should be changed by inserting the underlined phrase to read as follows:

> "to be bound on the same basis and to the same extent as the transferor Regional Corporation by the provisions of the agreement dated June 29, 1982, among and between the parties to Aleut Corporation et al. v. Arctic Slope Regional Corporation (Civ. Act. A75-53 D. Ak.)"

This language, which was in the prior AFN, needs to be inserted to clarify the 7(i) obligation of the qualified transferee entity.

11. Section 7b(f)(3). The House Bill has gutted the language of the prior AFN draft which made the Regional Corporation and the qualified transferee entity jointly and severally responsible for section 7(i) obligations. Under the language of the House Substitute the assets would rest with the qualified transferee entity and the responsibility would remain with the Regional Corporation. This is a perfect formula for attempting to evade section 7(i) responsibilities. The language from the previous AFN draft (underlined) should be inserted, so that 7b(f)(3) would read as follows:

> "The Regional Corporation or, in the case of its dissolution, another single entity designated by its shareholders or the United States district court, as appropriate, shall be jointly with the qualified transferee entity and severally responsible for the division and distribution under section 7(i) of the revenue subject to section 7(i) received by the Regional Corporation or qualified transferee entity and for administering the provisions of section 7(i) and the June 29, 1982, agreement with respect to assets subject to section 7(i) conveyed by such corporation pursuant to this Section."

12. Section 7b(F). The House Bill has omitted important language from the prior AFN draft which prohibited distribution of section 7(i) assets to members of the qualified transferee entity, or conveyance other than on commercially reasonable terms. It is important that this language be reinserted to prevent the

qualified transferee entities from being a vehicle to evade section 7(i). Thus a new section 7b(f)(5) should be inserted to read as follows:

> "(5) Assets subject to section 7(i), or any interest therein, conveyed to a qualified transferee entity shall not be distributed to members of the qualified transferee entity, nor shall such assets be otherwise alienated except upon commercially reasonable terms."

13. Section 7b(g)(3). The references to section 7a(f)(2) and 7a(f)(3) do not work for the reasons set forth in comment 8 above. The language should be revised, with the insertion of the underlined language, to read as follows:

> "For the purpose of this section, a resolution establishing dissenters' rights may provide that the Native common stock shall be valued on the basis set forth in section 7a(f)(2), except that the language after the comma in section 7a(f)(2)(A) shall be disregarded, and/or that the form of payment to dissenting stockholders shall be as provided in section 7a(f)(2) and in section 7a(f)(3)."

14. Section 21(f). The word "amending" in the House Bill should be "amended." Additionally, the phrase "imposed by paragraph (1) of section 7(h)" should be inserted after the phrase "limitations on alienation of Native common stock." This language, which was in the prior AFN draft, is needed since there are limitations on alienation which can be imposed other than the section 7(h)(1) limitiation. Removal of these limitations, which are not as broad as the section 7(h)(1) limitation, should not trigger the termination of section 21(f)'s provisions.

15. Section 28(a)(1)(A). The phrase "other than Native common stock" should be inserted after the language "issues any shares of stock", so that this provision will read as it did in the prior AFN draft. This change is needed because when a corporation issues Native common stock (for example, upon a stock split or as a stock dividend) some will go to holders of Native common stock who have acquired such shares by inheritance and who are neither Natives nor descendants of a Native. Such a distribution should not trigger the applicability of the securities laws.

16. Section 28(a)(1)(B). The phrase "imposed by paragraph (1) of section 7(h)" should be inserted after the language "limitations on alienation of Native common stock", for the reasons given in comment 14 above.

17. Section 28(b)(2). For consistency with the terminology used elsewhere in the Bill, the word "shareholders" should read "stockholders".

18. Section 29(c). The phrase "including land received from such individual's Native Corporation or Native group" should be amended to read "including stock or land received from such individual's Native Corporation or Native group". Just as it is important to make it clear that land received from a Native Corporation does not adversely affect eligibility of individual Natives or descendents of a Native for participation in any federal assistance program, it should be made clear that such eligibility is not adversely affected by receipt of any stock from the Native Corporation. If, for example, the restrictions on alienation are terminated and a new class of stock is issued to replace the old Native common stock, receipt of this stock, which is the consideration the shareholder has received for extinguishment of aboriginal land rights, should not have any effect on the individual's eligibility for federal assistance.

Senator MURKOWSKI. Thank you very much, Mr. Huhndorf.

Our next witness, I believe, representing the Alaska Native Coalition.

STATEMENT OF BOB ANDERSON, STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND

Mr. ANDERSON. My name is Bob Anderson. Thank you, Senator Murkowski. Mr. Kasayulie, who is the chairman of the coalition, was unable to attend. He was up in Kotzebue and just could not get his flights out of Alaska arranged. I am a staff attorney for the Native American Rights Fund in Anchorage, which represents the coalition, which is composed of IRA Councils, Traditional Councils, and Village corporations from throughout Alaska which favor tribal self-government.

When ANCSA was passed to settle the aboriginal land claims of Native tribes those tribes were overlooked and not used as a vehicle for the settlement. In Akiachak and other villages, people wish to use an alternative system to hold their lands and to manage affairs on the local level.

In testimony presented to this committee last May in Alaska, we indicated our opposition to Senate bill 2065 because we thought it did not confirm our status as federally recognized tribes with rights equal to those of lower 48 tribes.

While we would still prefer amendments that would confirm those rights that we believe exist and ought to exist, we have modified our position. Discussions within our organization and with the Alaska Federation of Natives throughout the spring and summer have brought us to the point where we feel we can support the bill, provided that it remains absolutely neutral on the issue of tribal self-government and Indian country.

We also have some specific concerns respecting the bill which I will briefly outline for you. We feel the savings clause can remain applicable to both these amendments now under consideration and to ANCSA as it was originally passed.

Senator Stevens this morning, and your colleagues on the House side who were present in 1971 when ANCSA was passed, have repeatedly set forth their belief that the land claim settlement was in no way intended to affect tribal governmental rights. Therefore, we feel that application of the savings clause to these amendments and to ANCSA in 1971, as passed, is consistent with your intent of remaining neutral on the issue of tribal self-government.

Second, we have some concerns with the qualified transferee entity section. Simply, we feel that the primary focus of that section was to permit the transfer to tribal governments, and we would like to see tribal governments specifically mentioned in that section or I think we have actually built adequate legislative history that that is the clear intent and we will not have any problem conducting such transfers if the bill is passed.

Third, the land bank provisions need to be strengthened to protect the few village corporations which have been involuntarily dissolved under State law for failure to comply with the various technical corporate requirements and to provide that those now dissolved entities can transfer their lands to a QTE.

An additional point that we had not made earlier is an objection to the land bank section provision that provides that any QTE land shall be subject to condemnation according to State law. Lands owned by tribal governments in the lower 48 and in Alaska we believe is not now presently subject to condemnation by State governments. They have to negotiate lease agreements in the lower 48, and we see no reason why tribally owned land in Alaska should be treated any differently. So concluding the section providing for State condemnation, we feel it is not consistent with the stated intent of remaining neutral on the tribal self-governmental issue.

In conclusion, we are I think getting close to being satisfied with your intent and the intent expressed by Senator Stevens that these amendments not be construed as affecting or diminishing or in any way enhancing tribal governmental powers. We would specifically oppose a savings clause that would be along the lines proposed by the Department of the Interior that would forever foreclose the establishment of Indian country through means that we feel already exist.

Our organization has modified its position considerably in an effort to ensure the passage of the many important changes in ANCSA that are included in these amendments. Again, I just want to emphasize that, provided the bill remains neutral on the tribal self-government issues, the Alaska Native Coalition will fully support enactment of this bill.

Thank you.

[The prepared statement of Mr. Kasayulie follows:]

ORAL TESTIMONY
OF
WILLIE KASAYULIE ON
BEHALF OF THE ALASKA NATIVE COALITION
WITH RESPECT TO
S. 2065

August 4, 1986

My name is Willie Kasayulie from the Native village of Akiachak. I'm here testifying as Chairman of the Alaska Native Coalition, which is made up of Indian Reorganization Act Councils, Traditional Councils, and Village corporations from throughout Alaska which favor Native self-government. When ANCSA was passed to settle the aboriginal land claims of Native tribes, the tribal governments were not used as the vehicle for the settlement. In my village and in many other villages the ANCSA corporations are not working and will not work. We wish to be able to use our traditional organizations to manage the affairs of our villages when that is determined to be the will of the local Native people.

In testimony presented to this Committee last May in Alaska, we indicated our opposition to S. 2065 because it did not confirm our status as federally recognized tribes with rights equal to those of lower '48 Indian tribes. While we would still prefer amendments that would confirm our status as federally recognized tribes, we have modified our position. Discussions within our organization and with the Alaska Federation of Natives have brought us to the point where we can support the Bill, provided it remains absolutely neutral on the issue of tribal self-government. We also have some specific concerns respecting the Bill which I will briefly outline. I will submit expanded comments and proposed language to the Committee shortly after my return to Akiachak.

The savings clause should remain applicable to both the amendments now under consideration and to ANCSA as originally passed. While some may argue ANCSA terminated tribal governmental powers, it is certain that such an extreme step would not have been taken without even mentioning such an intent on the face of the Act. Your colleagues who were instrumental in the passage of ANCSA have repeatedly stated that it was a land claim settlement and did not affect, nor was it intended to affect, tribal governmental rights. Application of the savings clause to these amendments and to ANCSA is thus consistent with remaining neutral on the issue of self-government. The present savings clause should be re-drafted to delete the distinction between Native councils and federally recognized tribes. Such a distinction serves no purpose.

Second, the qualified transferee section was included in order to facilitate transfers of corporation land to tribal governments. That Native governments are among the eligible recipients should be expressly set forth in this section.

Third, the land bank provisions should be strengthened to protect those village corporations which have been involuntarily dissolved for failure to comply with technical requirements of state law, and to provide for their transfer to a qualified transferee entity.

We strongly object to the provision in the land bank section which makes land transferred to any QTE subject to condemnation according to state law. Tribally owned land is not now subject to condemnation. That is the law for lower '48 tribes and we should not be treated differently. Including this section would not be consistent with the stated intent of remaining neutral with respect to tribal governmental rights. The section should be amended to provide that lands held by a QTE are subject to condemnation only if the entity's lands are otherwise subject to condemnation under existing law.

Our organization has modified its position considerably in an effort to ensure the passage of the many important changes in ANCSA included in these amendments. You will find that there is a consensus within the Native community that the changes I have briefly outlined are necessary to achieve the objectives of this Bill. Additional and expanded comments with proposed language will be submitted shortly. Thank you for this opportunity to present the views of the Alaska Native Coalition.

Senator MURKOWSKI. Thank you very much.

Mr. McNeil, senior vice president, general counsel, Sealaska, Corp.

STATEMENT OF CHRIS E. McNEIL, JR., SENIOR VICE PRESIDENT AND GENERAL COUNSEL, SEALASKA, CORP.

Mr. McNEIL. Thank you very much, Mr. Chairman. I do want to express my appreciation for the extensive efforts that you have taken for the 1991 bill and that of the Senate. Both the House and the Senate of course have given very extensive and thorough consideration to the 1991 bill. I believe now really is the time to take action on this during this session. I think the comments earlier that there have not been thorough consideration has not been well taken.

Sealaska supports S. 2065 with several proposed amendments. First of all, the 1991 legislation has not been without its controversies. And the question of section 7(c) and the savings clause has been one of them. Sealaska favors the AFN proposal. There should be a savings clause which makes it clear that neither ANCSA nor its amendments affect the scope of tribal self-government among Alaska Natives. The provision should neither expand nor contract existing rights nor foreclose future rights. This is an area of dispute and should be resolved by the courts.

AFN had also previously proposed two provisions which are not now included in the House bill. Sealaska concurs with both provisions. The first is a tax provision which has been mentioned by Mr. Huhndorf which provides that any transfers of land under a qualified transferee entity or to subsidiary corporations would not give rise to any Federal, State, or local taxation.

We believe that this is a necessary provision so that the Alaska Natives are not penalized by authorized transfers of assets under these amendments. Without the amendments, it is likely that the IRS would take an aggressive tax provision, which might effectively foreclose the transfers that would be authorized. Proposed language has been attached to this testimony.

Second, section 7(g)(2) authorizes issuances of shares to Natives and non-Natives to provide a vehicle for ANCSA corporations to enter capital markets to raise capital from sources that are in addition to commercial lending institutions.

Sealaska supports a mandatory language which would assure that its subsidiary corporations could also issue such stocks into such markets in order to make use of the transferred corporation assets in such marketplaces. We have also attached appropriate mandatory language to that effect for your consideration.

In sum, Sealaska proposes two amendments which were submitted by AFN previously and supports early enactment of comprehensive 1991 legislation. The legislation will provide the necessary protections for Alaska Natives and it will also strengthen the Alaska Native corporations as businesses, in order that they be able to be strong participants in the Alaska economy.

Thank you very much.

[The prepared statement of Mr. McNeil follows:]

TESTIMONY OF CHRIS E. McNEIL, JR.

Senior Vice President and General Counsel
Sealaska Corporation
Juneau, Alaska

Before the Senate Energy and Natural Resources Committee

Regarding the 1991 Amendments to the
Alaska Native Claims Settlement Act

August 4, 1986

TESTIMONY

I am Chris McNeil, Jr., Senior Vice President and General Counsel of Sealaska Corporation.

I do appreciate that the Senate has undertaken to consider the 1991 legislation during this session. Both the House and the Senate have given the 1991 bill due consideration both in Alaska and here in Washington, D.C. The Alaska delegation asked for a consensus from the Alaska Native community as a precondition for a bill. We have a consensus and now there is the opportunity to and need to move forward with a bill which deals comprehensively with 1991 issues.

The 1991 legislation has not been without its controversies to be sure. There has been a vast misunderstanding about the status of the tribal self-government savings clauses in section 7c. Sealaska favors the concept originally proposed by the Alaska Federation of Natives (AFN). There should be a savings clause which makes it clear that neither ANCSA nor any of its amendments affect the scope of tribal self-government among Alaska Natives. The provision should neither expand nor contract existing rights, nor foreclose future rights. This is an area of dispute and should be resolved by the courts.

AFN has also proposed two provisions which were not included in the House bill. Sealaska concurs with both provisions. The first is a tax provision which provides that any transfers of land under a qualified transference entity or to subsidiary corporations will not give rise to any form of federal, state or local taxation. This is a necessary provision in order to assure that Alaska Natives are not penalized for making an authorized transfer of assets under these amendments. Without an amendment it is likely that the IRS will take an aggressive stance on taxability. The proposed language is attached.

Secondly, section 7(g)(3) authorizes issuance of shares to Natives and non-Natives to provide a vehicle for ANCSA corporations to enter the capital markets to raise capital sources in addition to commercial banks. Sealaska supports amendatory language which would assure that its subsidiary corporations could also issue such stock in such markets and be able to make use of transferred corporation assets in such market places. The appropriate language is attached.

In sum, Sealaska proposes two amendments which were submitted by AFN and supports early enactment of comprehensive 1991 legislation. This legislation will provide the necessary protections for Alaska Natives and will strengthen the ANCSA corporations as businesses in order for the ANCSA corporations to remain strong participants in the Alaska economy.

valued on the basis set forth in section 7(h)(6)(C) and/or that the form of payment to dissenting stockholders shall be as provided in section 7(h)(6)(D).

~~[(2) A resolution described in paragraph (1) of this subsection may also provide that the Native common stock of such Native Corporation shall be valued only as restricted stock (having the same restrictions for the same period then applicable to the stock) or that the value of the land, or any interest therein, received by the Regional Corporation pursuant to this Act, which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such resolution is adopted, shall be excluded by the dissenting stockholder, the Regional Corporation and any court in the determination of the fair value of the shares of Native common stock to be purchased from such stockholder by the Regional Corporation.]~~

"(f) If a Regional Corporation distributes assets or stock to a qualified transferee entity pursuant to this Section or to a partnership, corporation, or other entity which, upon completion of the transaction, is one hundred per centum owned by the Regional Corporation and/or its stockholders, neither the distribution nor the receipt of such assets or stock shall subject the transferor, the transferee, or its stockholders to any form of Federal, state or local taxation.

"(g) The basis to the transferee of any asset or stock distributed to an entity described in subsection (f) shall be the same as it would be in the hands of the transferor.

"(h) Sections 21(c) and 21(d) of this title shall continue to apply to any asset distributed to an entity described in subsection (f) and to any asset owned by a corporation the stock of which is distributed to an entity described in subsection (f) and to lands received by a Native Corporation under an exchange pursuant to section 22(f).".

Sec. 6. The Alaska Native Claims Settlement Act is further amended by adding a new section to read as follows:

"Sec. 7b. (a) If ~~the~~ Bristol Bay Native Corporation or any Village Corporation located in the Bristol Bay region so elects pursuant to section 7(h)(2), a vote on the question of whether to continue restrictions on the alienation of Native common stock shall be conducted by such corporation pursuant to the following procedures:

"(1) Within two years after the election under section 7(h)(2) and, if the quorum requirement specified in paragraph (3)(B) of this subsection is not satisfied, at least once each calendar year thereafter, ~~on or before December 18, 1991,~~ the ~~share~~ holders of Native common stock of the corporation shall vote on whether to extend the restrictions on alienation of Native common stock described in section 7(h)(1) for such period, not less than twenty years nor more than fifty years, as the shall be recorded by the Regional Corporation, together with copies of subsections 7a(b)-(e) and this subsection, in the land records of the appropriate recording district.

"(4) The village entity to which any subsurface estate is conveyed pursuant to this subsection may not convey or otherwise transfer all or any part of such subsurface estate to any other entity without the express consent of the transferor Regional Corporation.".

Sec. 11. Section 7(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(g)) is amended to add the following new paragraph:

"(23)(A) Notwithstanding any other provision of this Act and in addition to any other existing authority, if authorized by amendment to its articles of incorporation after the effective date of this Act, any Regional Corporation may issue and may cause the issuance of such shares of stock of the Regional Corporation and its subsidiaries divided into such classes and series within classes, with such preferences, limitations, and relative rights, including, without limitation, dividend rights, voting rights, liquidation preferences, and, if originally issued only to the class of stockholders who, prior to the date of such issuance, were the holders of the class of stock issued to stockholders who were not residents of villages ("nonvillage stockholders"), rights to share in distributions made to stockholders under subsections (j) and (m) of this section, as may be provided in ~~its~~ the articles of incorporation or an amendment thereto of the Regional Corporation and its subsidiaries. Notwithstanding any provision of State or other Federal law, such shares may be subject to ~~in~~alienability restrictions not in excess of the restrictions provided for in paragraph (1) of section 7(h), as provided in the articles of incorporation or an amendment thereto. Notwithstanding any provision of State or other Federal law, in addition to shares of Native common stock issued pursuant to paragraph (2) of this subsection, the Regional Corporation and its Subsidiaries may issue ~~issuance~~ ~~of~~ one or more classes of such stock ~~may be~~ restricted to (i) Natives who have reached the age of sixty-five or (ii) any other identifiable group of Natives: PROVIDED, That such group is defined in terms of general applicability, and, except as provided in subparagraph (C) of this paragraph, is not in any way defined by reference to a place of residence, family or position as an officer, director, employee of a Native Corporation or ~~share~~stockholder of a Native Corporation other than the issuing ~~C~~corporation. Any ~~such~~ shares of stock issued pursuant to this paragraph may be issued to holders of Native common stock or others as a dividend or other distribution upon outstanding shares of stock or for such consideration as may be permitted by law.

"(B) Any amendment to the articles of incorporation of a Regional Corporation which permits the issuance of classes ~~and~~ or series of stock other than Native common stock shall specify the maximum number of shares that may be issued in any such class or series, and the maximum number of votes that may be held by shares of such class or series. During any period in which the restrictions on alienation of Native common stock imposed by paragraph (1) of section 7(h) are in effect, no stock may be issued under this ~~section~~ paragraph to a group of individuals composed only of employees, officers and/or directors of the ~~Native~~ Regional Corporation. If such amendment permits the issuance of classes or series of stock which, when issued, singly or in combination, may cause the outstanding shares of Native common stock ~~bearing the restrictions on alienation provided for in paragraph (1) of section 7(h)~~ to represent less than a majority of the voting power of all stock in the ~~Native~~ Regional Corporation, the stockholders of such corporation shall be expressly so advised in the proxy statement or other informational material distributed in advance of their vote upon the amendment. In no event may shares of stock other than Native common stock be issued more than thirteen months after the date of the stockholder vote authorizing the issuance of such stock if, upon the issuance of such stock and as a result of such issuance, the outstanding shares of Native common stock ~~bearing the restrictions on alienation provided for in~~

~~paragraph (1) of section 7(h)~~ will represent less than a majority of the voting power of all stock in the Regional Corporation: PROVIDED, That the restriction set forth in this sentence shall be of no further force or effect if shares of stock previously have been lawfully issued pursuant to this paragraph which have caused the shares of Native common stock ~~bearing the restrictions on alienation provided for in paragraph (1) of section 7(h)~~ to represent less than a majority of the voting power of all stock in the Regional Corporation or if the restrictions upon alienation of Native common stock provided for in paragraph (1) of section 7(h) have expired or been terminated by vote of the stockholders.

"(C) Notwithstanding the issuance of additional shares of Native common stock or ~~a~~ new classes or series of stock pursuant to this paragraph, the Regional Corporation shall continue to apply the ratio last computed under subsection (m) before the effective date of this Act for purposes of distributing funds under subsections (j) and (m). If shares of different classes or series have been issued pursuant to this paragraph to nonvillage stockholders, ~~the class of stockholders who, prior to the effective date of this Act were the class of stockholders holding nonvillage stock (nonvillage stockholders),~~ distributions payable under subsections (j) and (m) shall be made with respect to such classes or series in accordance with the rights, if any, of each class or series to share in such distributions as provided in the articles of incorporation or an amendment thereto and, if so provided in the articles of incorporation or an amendment thereto, the right to share in such distributions may be established as a right or other security separate from any other shares issued to such nonvillage stockholders. ~~Common stock issued pursuant to this subsection which carries the same rights and restrictions provided for in section 7(h) or which is issued in substitution for Native common stock shall be deemed to be Native common stock as long as all such rights and reservations are in effect with respect thereto.~~

Sec. 1~~0~~2. Section 21(d)~~(1)~~ of the Alaska Native Claims Settlement Act (43 U.S.C. 1620(d)~~(1)~~) is amended ~~to read~~ by deleting paragraph (1), renumbering paragraph (2) as paragraph (3) and adding new paragraphs (1) and (2) as follows:

"(1) All land and interests therein conveyed, pursuant to this Act, to a Native individual, Native group, village or Regional Corporation or corporation established pursuant to section 14(h)(3) ~~of this Act~~ shall, so long as such land and interests therein are not developed or leased to third parties or are used solely for the purposes of exploration, be entitled from the date of their conveyance to immunity from --

"(A) adverse possession and similar claims based upon legal theories of estoppel;

"(B) real property taxes by any governmental entity, including Federal, State, or local;

Senator **Murkowski**. Well, we will get down to some of the questions. Thank you very much, Mr. McNeil.

I am going to advise you that we have received, late last night, a communique from the Alaska Municipal League with regard to their proposed definition of taxation from revenue producing land entities. I would appreciate it very much if those of you on the current panel, any others who have addressed the group before or any interested parties would contact our staff and we will make sure those are available to you, because we would like to have your input on their recommendation.

I am going to start with Mr. McNeil. We have abcut 4 out of the 12 regional corporations—I believe that is correct—that are in opposition to section 9, and in view of the fact that we have an issue before us in the appropriateness of including it or treating it in some other manner or perhaps omitting it, I am wondering if your corporation, Sealaska, has a position.

This section would substantially increase the scope of the village corporation's power. It is primarily involving the transfer of subsurface rights to village corporations.

Mr. **McNeil**. We have been fairly neutral on that provision, and I think our concern about the way it is drafted is we are not sure what effect it would really have in a positive sense, even for the village corporations, because of the requirement that the proceeds be allocated essentially back out where they are right now. And we are not sure what benefit there would be for village management if they in effect may not be able to participate in the revenue proceeds under that section. We have not opposed it, but we are really not favoring it, either.

Senator **Murkowski**. Well, how would you suggest that it be resolved? You are an attorney and we are faced here with a situation where four corporations have expressed their opinion that they do not support it. And I am not sure just what the others do; perhaps they follow your pattern. You are really not taking a position on it. And the question is before us, we have to either include or exclude it.

Mr. **McNeill**. Well, let us put it this way: If it required any kind of reallocation of 7(i) rights, we would oppose it.

Senator **Murkowski**. You would oppose it? All right.

I am going to go to the other side of the dais and since it came up in the previous testimony, I am wondering would you care, Ms. Johnston, to comment on the question of how we resolve this difference on section 9? Elizabeth Johnston.

Ms. **Johnston**. As to resolving section 9, obviously I testified that Bristol Bay Native Corp., would be for the deletion of section 9.

However, in the Bristol Bay region, the main areas of friction between the village corporations, the owners of the surface estate and the regional corporation, the owners of the subsurface, have been in the area of sand and gravel. And Bristol Bay Native Corp. would have no objection to both the title and economic benefits of the ownership of sand and gravel as part of the subsurface being transferred to the village, but leaving alone the oil and gas and the hard rock minerals for the regional corporations to be shared under 7(i).

So that would be, if you like, our view of something that would deal realistically with a main friction in our own region, at the same time leaving alone the 7(i) structure that as Mr. Huhndorf has stated has been so laboriously worked out through litigation and ultimately the settlement agreement. Incidentally, as part of the settlement agreement, the different regional corporations did agree that they would seek legislation that sand and gravel would not be subject to 7(i) sharing.

Senator MURKOWSKI. Is there a possible middle ground here where the regional corporations could manage for the villages the subsurface, or is that impractical?

Does anybody care to comment?

Ms. JOHNSTON. If the village corporation has the power to say yea or nay, the regional corporation's management is of no use.

Senator MURKOWSKI. I wonder if, since we have brought the issue up and we have a discussion going on it, what you would foresee would be the corrective measure. We have four that are in opposition, and we have to address it.

Mr. HUHNDORF. Mr. Chairman?

Senator MURKOWSKI. Mr. Huhndorf.

Mr. HUHNDORF. I would volunteer that perhaps the authorization to enter into a more comprehensive agreement with the village to protect its surface estate in the event of surface exploitation might be something that could be considered.

I think that that is the primary basis of the village concern is that they may somehow lose control over how development occurs and whether or not that development would impact subsistence resources. And I think those kinds of agreements are authorized now and maybe some language that expands on that ability might take care of much of the village concerns.

Senator MURKOWSKI. Let me express what I perceive our position to be. It came over from the House with it in. We have it before us; we are either going to have to leave section 9 in or take it out or address it in some other way. And that is really what I am looking for.

Mr. MCNEILL. I agree with Mr. Huhndorf. But I would like to say again that I think some villages have expressed the desire to have an actual reallocation of the 7(i) proceeds, and with that that is not a position that we can concur with. And if that is the bottom line——

Senator MURKOWSKI. It is not a position that you can concur with?

Mr. MCNEILL. I mean 7(j); I am sorry. It is not a position that we can concur with, no.

Senator MURKOWSKI. I want to make sure I understand. Your position is that you do not concur that the villages should basically have the authority to manage subsurface?

Mr. MCNEILL. To own the subsurface.

Senator MURKOWSKI. To own the subsurface, excuse me.

Mr. MCNEILL. Yes.

But on the question of management, it seems to me that there could be some provisions drafted that would relate to being able to enter into agreements to be able to deal with management questions.

Senator MURKOWSKI. So you basically object to this provision in the bill as it has come over from the House to the Senate which provides for the authority under section 9 for the villages to own subsurface? I want to make sure that I am communicating to you what my understanding is, and that is my understanding.

Mr. McNEIL. That is right.

Senator MURKOWSKI. You object to that?

Mr. McNEIL. Yes, we do.

Senator MURKOWSKI. Are you suggesting that we remove it? I mean, I am sharing with you my dilemma.

Mr. McNEIL. To the extent that it states that there would be an actual ownership interest, we object to it, yes.

Senator MURKOWSKI. I am sure Mr. Silver would have something to say, if asked, so I will ask.

STATEMENT OF STEVE SILVER, COUNSEL, GREENS CREEK MINING CO.

Mr. SILVER. Well, we have already testified to our position. Bristol Bay would like it removed, as would, as you know, the three others of the regions. Maybe I could put on the record part of the problem that relates to it to kind of place the issue in its context.

The problem, it provides for transfer of assets to villages. Those assets, if they are developed and money is realized from them, go into a 7(i) pool and they create money upon which all corporations share at least a portion. So consequently you have a difficult situation where it is not just a matter of uniting the surface and subsurface with two individual corporations, you affect all of the other corporations when you do this. That is why the provision is drafted to exclude 7(i) management. The resource money still goes into the pool. That creates a variety of management problems, and that is why we think it is best if the entire provision be removed.

I renew again, although there has not been discussion on this panel, trying to find a way to meet in the middle is to enact a provision upon which all regional corporations agreed in the 7(i) settlement agreement that sand and gravel which was found by the court to be a subsurface resource be designated by Congress to be a surface resource; and that we think the bulk of the problems certainly in our region and possibly elsewhere could be solved by this as a middle ground.

Senator MURKOWSKI. Why was section 9 not addressed in the House bill? We seem to have gotten all the goodies over here, and they seem to have gotten the bill out.

Mr. SILVER. All I can tell you is we lobbied hard on the House side to take it out, Senator, and we were not successful.

Senator MURKOWSKI. I have, I believe my count is five regional corporations now, and I will stand corrected if wrong, CIRI, Bristol Bay, Koniac, Aleut, and Sealaska have indicated their opposition to it. I hope during the balance of the hearing we will hear testimony from the other side, since it is part of the House bill, and I would like to hear from those who are supportive of it during this hearing process.

Would anybody care to make any comments on where we are at on this particular issue before I go to something else?

Mr. HUHNDORF. Mr. Chairman, the sand and gravel matter that Ms. Johnston brought up was not raised in the House because there was no concensus in the AFN. The Board discussed it, and there was no concensus as to whether sand and gravel should be put into the House bill; so it never was. There still is not a concensus today as far as I know.

Senator MURKOWSKI. So if you do not get a concensus, then, do you take pot luck?

Mr. HUHNDORF. If there is a general vote with most of the participants at the AFN voting in favor of something, that is what has been the standard for including things in this package of amendments. And there has not even been a vote.

Senator MURKOWSKI. And that was a majority of the votes represented in the AFN amendments to keep section 9 in?

Mr. HUHNDORF. Apparently, yes, sir, that is correct.

Senator MURKOWSKI. I am directing this question specifically to Chris McNeil and Steve Silver, with regards to the dilemma of the Department of the Interior on dissenters' rights and exposure that this brings about from the standpoint of the position of the Federal Government annunciated by Mr. Horn on behalf of the Secretary of the Interior, are we likely to get in your opinion a ready resolve of this? Or are we likely to get conditioned opinions from the Justice Department and others as to the extent of liability of the Federal Government on this issue?

Mr. MCNEIL. Mr. Chairman?

Senator MURKOWSKI. Mr. McNeil.

Mr. MCNEIL. Of course nobody can predict how a court would come out on an issue like this, but the fact of the matter is I think the language that is proposed is quite clear. It exempts any kind of recovery against the Federal Government, and a court would have several remedies which would include among them setting the provision aside, or a remedy against the corporations for the payment of the dissenters' rights if they held that those rights were permissible.

It seems to me that we are in a position with the existing language to foreclose the problem that the Department seems to be concerned about. That is, namely recovery against the Federal Government itself. It seems to me also Mr. Horn had stated the position of the Department as one being principally a policy matter, not so much that they have a legal opinion from the Department that says absolutely that the fifth amendment problem is conclusively decided in the manner in which they have stated it as a problem.

So I think the existing language takes care of it, and it is a policy question. I do not think it is purely a legal question to be decided here, and of course policy questions are very much in the purview of Congress insofar as these kinds of issues are concerned.

Senator MURKOWSKI. Well, I guess my concern is the fine line between the so-called policy and a statement by the Secretary of the Interior to my colleagues prior to a markup that would infer or imply that the Federal Government was basically accepting a significant liability. My colleagues may take the position that they have a responsibility to address the extent of the Federal Government's liability on a matter like this, regardless of your contention which I do not disagree with, but it is up to Congress to establish policy. But if we get a significant debate going in a markup session on someone who would defend the Secretary of the Interior's opinion on the liability question of the Federal Government, and another's position on how well Congress can set policy, you can I think appreciate the fact that we could very well have the focus of the conversation on the extent of the Government's liability.

That is why this issue is getting the attention that it is, because of that concern.

Mr. **Silver**. Mr. Chairman.

Senator **Murkowski**. Yes.

Mr. **Silver**. If I could address that, I agree entirely with Mr. McNeil. I found it interesting that the testimony this morning of Mr. Horn appeared to ignore the fact that the provision in the bill that holds the Government harmless from liability existed.

I urge you to ask the Department whether or not they agree or disagree that the provision that does ensure that no Federal monetary liability can occur is sufficient for the sovereign, in this case the United States, to hold itself harmless. And if it is not, then what language does it suggest.

To me it is unquestionable that the United States can hold itself harmless from liability if it so chooses. That is a basic tenent of sovereign immunity.

Senator **Murkowski**. You say it is your opinion that they can, or cannot?

Mr. **Silver**. Can, c-a-n. They can.

Senator **Murkowski**. We have asked that question, and we have not gotten the assurance that I would like to have gotten.

Mr. **Silver**. Maybe if you asked it in the negative and give them a timeframe to respond, that you will assume that you can if they do not respond—I do not know how you can make demands if they do not choose to, but the fact is that that ability exists.

Senator **Murkowski**. Well, I appreciate that. We will take that into consideration. We have asked the question. One of the other concerns is congressional action on Indian matters, and then this grey area where you get into corporate law. That is why we have so many lawyers I guess, to make sure we have plenty of opinions on the subject.

I have a question for the gentleman, Mr. Anderson, representing the Alaska Native Coalition. In your testimony on behalf of your client you gave reference to the maintenance of tribal self-government which the other American Indians enjoy. I think your reference was that there should be nothing to detract from that.

My question is one that has come up in the hearing process, and perhaps you can address it: While that is certainly an appropriate concern, there are also substantial considerations that non-Alaska Natives do not enjoy that are unique and peculiar to the Alaska Native Land claims that passed in 1971.

So while there is a similarity in one sense, there is a difference in another. Can you comment on that reference when you refer to traditional tribal governmental rights that all Natives enjoy vis-a-vis the additional settlement that Alaska Natives got that others did not? Because there is a different concept. There is not a reservation; there is a corporation.

Mr. **Anderson**. Well, I will try to expand a little bit. Basically it all hinges upon the distinction between tribal governmental rights, inherent rights recognized by the U.S. Government in lower 48 tribes, and I believe in Alaska Native Tribal Governments, and the separate property rights.

Now in Alaska the separate property rights were extinguished, aboriginal title, through ANCSA without mention of the governmental authority. I think the caselaw is pretty clear, and I think most lawyers would agree that when Congress extinguishes Indian rights, Alaska Native rights being included within that group, it has to do so specifically. And in drawing on this caselaw from the lower 48 and to some degree from Alaska, we find that powers of self-government were not dealt with in ANCSA. Your colleagues have set that forth.

Since those tribal governmental rights were not expressly extinguished in 1971, they continue to exist, although they may not be being exercised in a great deal of circumstances up there. It is a complicated, somewhat different situation from the lower 48 because treaty-making was ended early on, or shortly after Alaska was acquired. So you do not have the situation where segments of land were carved up and given to tribes. The tribes actually own the real estate in addition to exercising governmental authority over that property.

Is that the sort of distinction you are trying to get at?

Senator **MURKOWSKI**. I appreciate you mentioning that for the record.

My last question, I would direct to Mr. Silver and Mr. McNeil, in view of their familiarity with the "process." Now that we have heard from the Department of the Interior—this morning was the first official position of the Department of the Interior given where it outlined specific concerns, though we have been asking for that for many, many months—and recognizing the timeframe that we are working under with contemplated sine die on October 4, can the process work in that timeframe? If we can get a consensus, and assuming that the Justice Department and various others are obviously going to have to give opinions, in your views can this legislation realistically could go through in this session?

Mr. Silver.

Mr. **SILVER**. I guess, yes, I think definitely it can. My reaction is, to quote George Will quoting Dr. Johnson, to say "The imminence of execution concentrates the mind."

If the Congress will move the process forward, I think that those parties who have to focus will focus and issues will resolve themselves. I think this legislation can get enacted this year.

Senator **MURKOWSKI**. How do you observe this process?

Mr. **MCNEIL**. Mr. Chairman, I think we can move quickly. Regardless of the belated participation of the Department, we have committed to meet with the Department this Thursday and we will make every effort to move forward with them. I think we have got a process going here now that ought to be able to be consumated during this session.

Senator **MURKOWSKI**. Mr. Huhndorf, do you have any comments?

Mr. **HUHNDORF**. Not much to add to that, except I think it is imperative that the legislation move this year. We are running out of time. As you pointed out this morning, it takes a long time to get corporations informed, get the villages informed, have your meetings, get your articles and by-laws amended, make the filings, and before you know it 4 years have run on you. So I really think it is important that we get the amendments.

Senator MURKOWSKI. They say time flies when you are having fun. With that, I will excuse the panel and wish you a good day.

Our next panel is panel 7: Mr. Greg Young from Juneau, AK; and Ms. Cheri Jacobus, National Rifle Association. Mr. Ron Somerville who had hoped to be here, but unfortunately he was unable to be in attendance.

Ms. Jacobus, would you care to start off?

STATEMENT OF CHERI C. JACOBUS, ON BEHALF OF THE NATIONAL RIFLE ASSOCIATION, AND OTHER CONCERNED NATIVES AND NON-NATIVE ALASKANS

Ms. JACOBUS. Yes, Senator.

My name is Cheri Jacobus. I am an Alaskan attorney and I am here on behalf of both the National Rifle Association, and other concerned Natives and non-Native Alaskans to testify on Senate bill 2065 which I think is now called the Alaska Native Claims Settlement Amendments of 1986.

I would like to point out for the committee that I have submitted written testimony with suggested amendatory language which I request be entered into the record.

Senator MURKOWSKI. It will be entered into the record.

Ms. JACOBUS. Thank you.

The National Rifle Association wants to make it clear that it opposes the passage of these amendments because the amendments would advance Native claims to tribal sovereignty to the detriment of other Alaskans and United States citizens, and in particular because of the effect of tribal government on fish and wildlife resources in the State of Alaska.

Other concerned Natives and non-Native Alaskans oppose these amendments because the amendments would hurt individual Native shareholders who may see their shares lose their value to them. This mirrors the testimony that was given by Mr. Horn this morning for the Department of the Interior.

I want to make it clear for the record that the issue of native sovereignty is not a ghost; it is real. All one had to do was listen to the testimony of the Tanana Chiefs this morning in their oral testimony when they stated quite clearly that they want no language which specifically states that the transfer of corporate assets and lands to Tribal Councils does not create Indian country.

Why is that? It is clear it is because it does. Regardless of disclaimers that are currently in both this particular piece of legislation and in the legislation that was passed by the House, it is not sufficient. The language that needs to be there needs to be very specifically against the creation of Indian country.

The issue of sovereignty is important in this piece of legislation. It is one that cannot be ignored. Sovereignty claims are enhanced by this legislation. One needs only look at the original Settlement Act to determine that sovereignty was dealt with, or at least affected, by the original Settlement Act. Why?

Because first it dissolved all reservations except Metlakatla. Significantly, Metlakatla was not allowed to participate in the Settlement Act itself. Second, it provided for State taxation of native lands after 1991. That is significant because where you have native sovereignty there is no taxation. They are immune from taxation.

It also established taxable corporations to receive native-selected lands rather than reservations. In other words, full title to those lands was conveyed to the corporations rather than retaining the land in some sort of Federal ownership in trust for the natives as had been done in the lower 48 on reservations.

It also enrolled natives as shareholders of transferable stock in native corporations rather than giving them racially based tribal membership that would be nontransferable. All of those issues are significant in determining whether or not tribal sovereignty exists on the lands that were given to the natives under the 1971 act.

That is the issue that is before this Senate committee. One of the elements of the legal test of whether lands are Indian country is whether the ownership of the land and the governing entity are in fact one. In this case, in this legislation the corporations would be permitted to transfer the land to tribal councils—that is the section we have been most concerned about—and those tribal councils would be allowed to manage the areas and assets as racially defined institutions.

This is permitted because this legislation now is called Indian legislation. It is significant that the original Settlement Act was not deemed Indian legislation in the legislation itself. As a matter of fact it was under public land management legislation.

The existence of sovereignty is very crucial. It would allow these transferee entities, or tribal councils, to manage the fish and wildlife resources and to regulate the harvest of fish and game in the State of Alaska. Some villages have already publicly announced their intent to manage these resources and to only allow natives to fish commercially in navigable waters.

The thing that concerns the National Rifle Association most is the things that would follow from an assertion of native sovereignty and an assertion of management over these resources.

First and foremost is the inconsistent regulation of fish and wildlife resources. I think that was really very well addressed by the Isaac Walton League this morning. Let us give an example, a nice concrete one: What could happen?

A village at the mouth of a river could have an open season on the taking of anadromous fish. They could end up taking all the fish in that area with villages at the headwaters getting nothing. This is what happens when you have inconsistent regulation, or nonuniform regulation of a wildlife resource. The problem with these resources is that many times once they are gone, they are in fact gone forever.

Second, the other concern is the fact that there could be racial discrimination. Because this is Indian legislation, at least according to the amendments, they would be permitted to discriminate racially against other groups in the State. This has already occurred at least in one case.

Based on these concerns, the National Rifle Association and other concerned Alaskans oppose these amendments. My law office has also had other Alaskans and Alaskan Natives come to it to state that they oppose these amendments because of the effect it might have on minority shareholders.

As Mr. Horn pointed out, minority shareholders could be hurt by this legislation. Minority shareholders are not adequately protected. This is something that the congressional committee should consider before they go further with this legislation.

In the final analysis, this legislation as written has far-reaching effects on Alaskans and American citizens in the lower 48. Therefore, the National Rifle Association and other concerned Alaskans urge that no final action be taken this session. While we recognize that the Congressmen consider that work has been pretty extensive on these amendments, the fact is that most Alaskans are late coming to this process and have not been included. They in fact were not part of the 4 years of preparation that the Alaska Federation of Natives took part in, and have only recently been included.

If that simply cannot occur, then we would urge that the congressional delegation adopt the proposed amendments that have been included in the written testimony as an appendix, and consider any further amendments that we might propose in the next 2 weeks.

Thank you.

[The prepared statement of Ms. Jacobus follows:]

LAW OFFICES OF
ROSS, GINGRAS, BAILEY & MINER
A PROFESSIONAL CORPORATION
1007 W. THIRD AVENUE, SUITE 204
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 276-5307

WAYNE ANTHONY ROSS
THOMAS S. GINGRAS
ALLEN M. BAILEY
EDWARD MINER
CHERI C. JACOBUS
DONALD J. MILLER, OF COUNSEL

WRITTEN TESTIMONY PRESENTED BY ATTORNEY CHERI C. JACOBUS ON BEHALF OF THE NATIONAL RIFLE ASSOCIATION ON AUGUST 4, 1986 TO THE SENATE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED LAND AND RESOURCE CONSERVATION CONCERNING SB 2065 AND H.R. 4162 (ALASKA NATIVE CLAIMS SETTLEMENT AMENDMENTS OF 1986)

This Subcommittee is presently considering SB 2065 and H.R. 4162 (Alaska Native Claims Settlement Amendments of 1986) -- Amendments to the Alaska Native Claims Settlement Act (ANCSA). The National Rifle Association is opposed to the passage of these Amendments. The Amendments that you are considering would make sweeping changes to the intent of the original Alaska Native Claims Settlement Act which was to be a full settlement of all Alaska Native claims.

This settlement was negotiated to settle all Native claims in Alaska. It was the largest land settlement negotiated with an American-Native population in the United States history. It involved the selection and transfer of over 40 million acres of Alaska land and payment to Alaska Native groups of more than $962 million. It extinguished all reservation lands with one exception and extinguished all claims based on aboriginal hunting and fishing rights. Its specific purpose was to avoid creating a reservation system and to avoid establishing any permanent racially defined institutions or creating any racially defined rights or privileges. The bottom line is that this settlement was to bring the Alaska Native population into the main stream of Alaskan life. The intent was clearly to avoid tribal sovereignty such as has existed in the rest of the United States.

THERE IS NO URGENCY TO ENACT THESE AMENDMENTS THIS YEAR

Congress has until January 1, 1992, to consider amending the Alaska Native Claims Settlement Act in order to address the matters that are addressed in the current Amendments. These Amendments, as written, raise numerous issues that are of vital interest to State, Federal and local governments in Alaska, as well as to Native and non-Native Americans. Therefore, these Amendments deserve much more consideration than they have had.

The issues raised by this legislation include Native sovereignty, management of fish, wildlife and other natural resources, taxation, equitable treatment of all Alaska Natives, shareholder control of Native corporations and Native entities, legal immunities for Native concerns, and conservation of lands and resources with the National Parks and Wildlife Refuges. Because these issues are so important, Congress should defer any action on these Amendments until next year at the earliest. This would allow more time for Congress and the American public to examine the Amendments and to carefully consider the long-range impacts of enacting them.

The National Rifle Association recently passed a resolution opposing these Amendments because the Amendments would advance Native claims to tribal sovereignty to the detriment of other Alaskan and United States citizens. The National Rifle Association, however, would like to emphasize that this is not the only problem with this legislation. The National Rifle Association urges Congress to carefully consider the effects that this legislation may have on individual Native people who actually own Native corporations created by the original Alaska Native Claims Settlement Act and who as a result of these Amendments may find that their shares no longer have any value to them.

The National Rifle Association's comments will address both the sovereignty issue and the effects of this legislation on individual Native rights. Attached as an exhibit are suggested specific amendatory language to address the sovereignty issue if this legislation does move through the Senate this year.

THESE AMENDMENTS ENHANCE CLAIMS TO NATIVE SOVEREIGNTY

The National Rifle Association opposes these Amendments, because they would have the effect of enhancing Alaska Native claims to sovereignty. The impact of these Amendments on Native claims of tribal status as Indian country is potentially great. Therefore, the National Rifle Association urges the Senate to address tribal status, Indian country and sovereignty directly, as opposed to merely disclaiming any effect on the scope of sovereign powers, if they exist.

Despite the claims of many individuals who are in favor of these Amendments, the clear intent of Congress in passing the Alaska Native Claims Settlement Act in 1971 was to eliminate the existence of Indian country in Alaska, a requirement for Native sovereignty. Recently, a State of Alaska Task Force on Federal-State-Tribal Relations prepared for Governor Sheffield reviewed the effect of the Alaska Native Claims Settlement Act on claims of Native sovereignty. The Governor's Task Force found that there are several sections in ANCSA which clearly indicate an intent to eliminate the existence of Indian country and concomitant claims of sovereignty.

For example, the Task Force pointed out that in the Declaration of Policy of the 1971 Act, § 2(b) of ANCSA, Congress stated:

> The settlement should be accomplished rapidly . . . without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship . . .

Congress also went one step further and actually extinguished all reservations in Alaska with the exception of the Metlakatla Indian Community of Annette Island.

Significantly, the Metlakatla Indian Community did not receive any of the benefits of ANCSA.

The Congressional Conference Committee explained the purpose of this change of land ownership status from reservation (where title was held by the Secretary of Interior in trust for the Native people) to private fee lands (where title is held by business corporations established pursuant to State law) as follows:

> Subsection 2(g) of the Conference Report is to be strictly construed and the Conference Committee does not intent that lands granted to Natives under this Act be considered 'Indian reservation' lands for purposes other than those specified in this Act. The lands granted by this Act are not 'in trust' and the Native villages are not 'Indian reservations'.

As Governor Sheffield's Task Force found, the major difference between a reservation and private fee land is that the former is Indian country and the later is not. Congress intended its revocation of all but one Indian reservation to make Native people in Alaska subject to the same laws as other residents of Alaska.

Significantly, the Native American Rights Fund (a legal defense group for Native Americans) recognized that the ANCSA altered the legal status of Alaska Native tribes. In response to the American Indian Policy Review Commission's position that ANCSA did not affect tribal status, the Native American Rights Fund said:

> However, serious exception must be taken with the basic premise of the finding that the (Settlement Act) did not intend to nor has it affected the sovereign powers residing in the Alaska Native communities. Although the (Settlement Act) does not terminate Alaska Natives with respect to their eligibility for federal services based on their status as Natives, it is wholly inaccurate to say that the Act did not alter, in any way, the legal nature or status of Alaska Native tribes.

The Native American Rights Fund then stated (as grounds for its position that ANCSA was intended to and did affect the sovereign powers residing in Alaska Native Communities) that § 2(b):

> . . . expresses a policy against creating reservations, wardships, or racially defined institutions;

See, Price, Native Rights, Alaska Department of Law, 1982, at 69-70.

H.R. 4162, as it was passed by the House, contains language which would, in effect, revoke § 2(b) of the original Act, eliminating, among other provisions of § 2, the provision that:

> The Settlement should be accomplished . . . without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservations system or lengthy wardship or trusteeship, . . .

Clearly the effect of H.R. 4162, as it passed the House, would be to repeal the original intent of the Alaska

Native Claims Settlement Act of 1971 and to enhance claims of Native sovereignty.

Some supporters of these Amendments claim that the Amendments are neutral as to their effect on Native sovereignty. This is clearly not the case. For example, § 7(c) as it currently reads in Senate Bill 2065 reads:

> Nothing in this Act shall be construed as enlarging or diminishing or in any way affecting the scope of any governmental authority of a federally recognized tribe, traditional Native council or Native council organized pursuant to the Indian Reorganization Act, as amended, or any ~~right,~~ privilege or immunity of Alaskan Natives as Native Americans in their relationship with the government of the United States.

This particular section clearly negates the intent of the Alaska Native Claims Settlement Act. As discussed above, the effect of the original Alaska Native Claims Settlement Act was to diminish assertions of Native sovereignty in the State of Alaska.

This particular section was redrafted in the House version, H.R. 4162 as § 8 to say that these Amendments do not affect the scope of Native governmental powers, if they exist. This disclaimer is not sufficient. It fails to address three issues related to sovereignty. First, it fails to address whether these Amendments, in conjunction with actions that could be taken under them, will enhance claims of tribal status. (Tribal status is significant to a claim of sovereignty.) Second, it fails to address whether these Amendments establish a method by which lands conveyed under the Alaska Native Claims Settlement Act could be converted into Indian country, which is also necessary for sovereignty. Third, it fails to address whether these Amendments enhance the opportunity for sovereignty under the Indian Reorganization Act.

The 1991 Amendments, as passed in H.R. 4162, despite the disclaimer, potentially effect the legal consequences of the Alaska Native Claims Settlement Act by establishing numerous immunities, including tax immunity, for Native lands and Native people and by establishing "qualified transferee" entities as racially defined and controlled institutions, contrary to the original intent and purpose of ANCSA.

Assuming that these transferee entities were tribal councils, these tribal councils could then apply for tribal status under the Department of Interior regulations, draft constitutions and bylaws under the Indian Reorganization Act, and exercise sovereignty over lands transferred to the entities by the Native corporations. Each Native council would then have the necessary combination of tribal status, tribal powers, and Indian country, notwithstanding the disclaimer in § 8 of H.R. 4162.

The consequences of tribal status, Indian country, and sovereignty are numerous and frightening. For example, there could be nearly 200 tribal governments in the State of Alaska. The most important consequence would be the effect on the regulatory powers of the State and these tribal entities. State health and safety codes, State regulation of fish and wildlife habitat, and State regulation of fish and game harvest would be affected. It is precisely this effect that the National Rifle Association opposes.

NATIVE SOVEREIGNTY COULD ADVERSELY AFFECT THE ENVIRONMENT

With the possibility of several hundred village councils regulating fish and wildlife habitat and fish and game harvest, the real possibility of inconsistent regulation exists. Presently, all Alaskans must comply with uniform and consistent rules and regulations concerning fish and wildlife habitat and fish and game harvest. The State and Federal regulations apply uniformly to all Alaskans. Native Alaskans are not singled out for special treatment. The Alaska Native Claims Settlement Act extinguished all aboriginal hunting and fishing claims.

In other areas of natural resource harvest, the environmental community has already observed the effect of transferring ownership from the Federal sector to the private sector. For example, the environmental community no longer has the ability to affect timber cutting policies in Southeast Alaska where the land has been transferred to Native owned corporations. This has resulted in some very inconsistent policies in the timber resource harvest.

In a resource rich state like Alaska, it is imperative that fish and wildlife habitat and fish and game harvest be subject to uniform and consistent regulation. Alaska is an extremely fragile environment and to allow individual communities, regardless of whether they are Native or non-Native, to control the habitat and fish and game harvest would be disastrous.

NATIVE SOVEREIGNTY PROMOTES RACIAL DISHARMONY

Even now the Village of Tyonek has enacted an ordinance prohibiting non-Natives from staying overnight in the village. Other villages in Alaska are charging "trespass fees" of up to $1,000 per person. Some villages have stated publically that they intend to control commercial and sport fishing in navigable waters by restricting such fishing to Natives only. If these Amendments are passed, the situation in Alaska will get much worse.

Native sovereignty allows the Native villages or groups to, among other things, control the management of fish and game in their area, control or banish hunting for non-Natives and otherwise interfere with proper State game management. Alaska could be divided up into several hundred hunting preserves run by individual Native villages or Native groups where non-Natives would be required to buy licenses, pay to hunt, or be denied the opportunity to hunt at all. Clearly this is not what Congress intended when it passed the Alaska Native Claims Settlement Act in 1971.

The Settlement Act itself said that its intent was to not create racially defined institutions, rights or privileges. It is for these reasons that the National Rifle Association opposes these Amendments and requests that the Senate not pass either Senate Bill 2065 or H.R. 4162, as passed by the House.

THE PROPOSED AMENDMENTS
DISCRIMINATE AGAINST INDIVIDUAL NATIVE PEOPLE

The following comments represent the views of concerned Natives and other Alaskans about the effects of these amendments on individual shareholders and are not the basis for NRA opposition.

The shares of stock created by ANCSA in 1971 were owned by individual Native people. The only restraint on ownership was on alienation for 20 years. In 20 years each individual will be allowed to control his or her shares and to use them for his or her own individual benefit or investment. This private ownership of a means of production of income, with the concomitant right to decide on its beneficial use, would have brought Native individuals into the free enterprise system of the 20th Century. The individual Native would finally have control over his or her own destiny.

The proposed Amendments, however, will assist various Native leaders in extinguishing the individual Native's right to receive the legacy that individual has been promised for so long. The proposed legislation does not even give the individual Native the right to decide if he or she wishes to give up his or her legacy. Instead, the Amendments would make the taking of those individual options to property automatic, and only if a large enough percentage of other Natives agree, can the individual get his or her property back.

An insidious thread runs through the proposed Amendments that will not only make it extremely difficult for any Native shareholder to sell his or her stock at a reasonable price, but ultimately, will eliminate all shareholders who wish to sell their stock and create an extremely powerful and elite group of shareholders.

While the Act does provide that any group of Native shareholders can vote to exempt themselves from these Amendments and allow their stock to be freely alienated and sold, as a practical matter, the Amendments make it impossible at any time in the foreseeable future for this to occur. Any vote to allow the stock to be sold must first be made pursuant to a quorum of at least 51% of the outstanding shares of Native stock entitled to voted. Then, when the vote is held, it must receive the affirmative vote of at least 50% of the outstanding shares of stock entitled to be voted, or an affirmative vote greater than 50% of the shares voted, or both, to approve any such proposal. This means, at a minimum, that if only 51% of the shares entitled to be voted were present at a meeting (either personally or by proxy) for the purpose of voting on a question of being allowed to sell the stock, 98% of those present (or 50% of the outstanding shares eligible to vote) must vote in the affirmative for the issue to carry.

The most insidious provision of these proposed Amendments is the way in which a dissenting shareholder is to be treated. If a dissenting shareholder (one who wishes to have the stock freed for sale) demands payment for his or her shares, such payment will be made to him or her by the regional corporation based upon a formula for the valuation of the stock. The stock is purchased with funds of the regional corporation, and then is retired, thus increasing the pro rata share of each remaining share of stock in the corporation.

More importantly, the valuation of the stock for purposes of payment to a dissenting shareholder, however, does not represent the full value of stock when considering all the assets of the corporation. The value of any land or interest that has been committed by the corporation to "Native traditional or cultural uses" or is "of speculative or unknown value" is excluded in making the value determination for payment to the dissenting shareholder. Given the nature of the assets held by the regional corporations, this means that the regional corporation can make each individual share valueless for the purposes of buying out dissenting shareholders. These Amendments not only allow for the elimination of dissenting shareholders (thus preserving the status quo) but it pays the dissenting shareholders less than full value for their stock. The value of the shares is determined solely by the Board of Directors.

These particular provisions are extremely complicated and may provide the regional corporations with the ability to abuse the rights of individual Native shareholders. Removing private property from individuals should not be automatic, as these Amendments propose. Clearly, these Amendments deserve greater consideration than they have been given thus far.

SUMMARY

There is absolutely no reason that these Amendments need to be passed this year. Given the far reaching affects of these proposed Amendments, Congress should delay action on these Amendments until there has been further consideration by the American public.

CHERI C. JACOBUS
Attorney at Law

SUGGESTED AMENDMENTS TO H.R. 4162

Section 2: CONGRESSIONAL FINDINGS

Suggested Amendment

Strike section 2(b) of H.R. 4162, leaving the original section 2(b) as written in the original Alaska Native Claims Settlement Act of 1971.

Rationale:

Section 2(b) as written in H.R. 4162, materially changes the policy and purpose set forth in ANCSA and further finds the corporate model adopted by ANCSA to be inappropriate. This finding may be used in later legal or political arguments to promote sovereignty, since this finding would specifically repeal the findings set forth in the original Act and would promote claims that tribal status under 25 C.F.R. 83.1 *et seq*. and the creation of reservations under the Indian Reorganization Act, 25 U.S.C. §§ 465 and 476, would be more appropriate models. Therefore, this finding should be deleted if Congress seeks to avoid promoting sovereignty.

Suggested Amendment:

Strike section 2(c) of H.R. 4162.

Rationale:

Subsection (c) criticizes the value and effectiveness of the settlement in 1971. It is not relevant to any of the substantive provisions of the Amendments. It should therefore be stricken. It seems to imply that something more should be done to benefit Alaska Natives and settle their claims equitably. In that sense, it bolsters all other arguable benefits, including sovereignty and special tax status. ANCSA settled Native claims in a scheme that was designed to promote finality, as opposed to an on-going process. The settlement should not take on the appearance of being an on-going settlement with on-going implementation, as suggested by other portions of the findings at subsection (d), paragraph (A) in Section 2.

Suggested Amendment:

Section 2(d) of H.R. 4162 should have paragraph (A) amended to read as follows:

> (A) Provide the stockholders of each Native corporation an opportunity to manage the benefits derived from the settlement in the manner which they determine is best suited to their particular circumstances, except that such opportunities shall not include Native sovereignty, tribal status, or recognition of Native lands as Indian country unless specifically authorized by Congress.

Rationale:

This amendment is suggested so as to state a Congressional intent to allow flexibility without sovereignty, tribal status, or creation of Indian country or preemption of State law unless specifically provided by Congress. This suggested amendment also deletes the portion of the current paragraph (A) that says that Congress finds that the corporate model may be inappropriate for holding lands. This finding relates to the provisions of the Bill dealing with qualified transferee entities. Because these entities will likely be tribal councils, this finding raises the issue of Indian country, state jurisdiction over corporate lands as opposed to Indian country, and Native sovereignty. Leaving this Congressional finding in the Bill allows it to become an underpinning for legal and political arguments that sovereignty exists or should be permitted and that special relationships survived ANCSA whereas the corporate model clearly implies otherwise.

Suggested Amendment:

Strike § 2(e) of H.R. 4162.

Rationale:

Finding that ANCSA and these Amendments are Indian legislation opens the question of statutory construction of ANCSA and these amendments to the judicial guideline that ambiguities and Indian legislation are construed in favor of the Indians. More importantly, it results in the ability of Indian communities to discriminate along racial lines. Whether ANCSA is Indian legislation, public land legislation or other legislation has been the subject of dispute. It is presently codified in Title 43, as Public Land legislation.

SECTION 7: TRANSFER OF ASSETS: QUALIFIED TRANSFEREE ENTITY

Suggested Amendment:

Section 7 of H.R. 4162 should be deleted in its entirety.

Rationale:

Section 7 of the Amendments allows Native corporations to transfer their land and other assets to "qualified transferee entities". In all likelihood, these would be tribal councils, according to the Native American Rights Fund. The bill provides that membership in these entities could be restricted to Natives and descendants of Natives.

Section 7 has several problems. First, it fails to consider the interests of shareholders of Native common stock who vote against the transfer. Second, the Bill fails to address the interests of shareholders who hold non-voting shares. Ordinarily, Section 7 would spawn litigation by dissenting shareholders and holders of non-voting, non-Native common stock who are left with valueless stock after the transfer. However, Section 13 of the Amendments allows the transfer entities to be immune from such litigation. Thus, there is not even recourse to the courts for those dissenting shareholders. As discussed in the main testimony, obviously the main problem with these Amendments is that this section would enhance arguments for Native sovereignty.

SECTION 8: DISCLAIMER: TRIBAL GOVERNMENT

Suggested Amendment:

Section 8 of H.R. 4162 adds a new section 7(c) to the Settlement Act to say that nothing in these Amendments shall affect the scope of Native governmental powers, if any exist. This should be amended, because of the sovereignty issue and the potential effects of this Bill on it through the authority of the Secretary of Interior to recognize tribal status and approve constitutions under the Indian Organization Act, as follows:

> Section 7(c): The Secretary of the Interior may not construe Alaska Natives or any organizations composed wholly or primarily of Alaska Natives to be tribes for purposes of Federal Indian law except as they are specifically recognized as tribes by Congress. Without the approval of Congress, specifically authorizing the exercise of Native sovereign governmental powers in Alaska, the Secretary of Interior may not approve any Alaska Native constitutions under the Indian Reorganization Act, as amended, or otherwise recognize Alaska Native governmental powers, if such constitutions or powers would preempt or be concurrent with the jurisdiction of the State of Alaska.

Rationale:

This suggested language effectively requires Congress, rather than the Secretary of Interior and the Courts, to deal first with the issues of sovereignty. This is appropriate, because of the many risks that this Bill would enhance claims of tribal status and Native sovereignty.

SECTION 13: REAL PROPERTY INTERESTS: IMMUNITIES

Suggested Amendment:

Amend Section 13 of H.R. 4162 to read as follows:

> Section 907(c)(2) of the Alaska National Interest Lands Conservation Act is amended to read as follows:
>
> (2) As to Native Corporations and all other persons or groups that have received or will receive lands or interests in lands therein pursuant to the Alaska Native Claims Settlement Act or sections 901 and 902 of this title, the following immunities shall be granted; provided that none of these immunities shall be construed to as a grant of, or implied approval of, or any affect on claims of tribal status, tribal powers, or Native sovereignty --
>
> (A) adverse possession;
>
> (B) real property taxes and assessments by the United States, the State, or any political subdivision of the State: Provided that such immunity shall cease if the lands involved are leased or developed, as such terms are used in section 21(d) of the Alaska Native Claims Settlement Act;
>
> (C) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native Group or any officer, director, or stockholder of any such Corporation or Group;
>
> (D) judgment resulting from any claim based upon or arising under title 11 of the United States Code relating to bankruptcy (or any successor statute), other insolvency or maratorium laws, or other laws affecting creditor's rights generally; and
>
> (E) involuntary distribution or conveyance related to the involuntary dissolution of the Native Corporation.

> On or before January 31 of each year beginning the fourth year after the date of enactment of this Act, the Secretary shall publish in the Federal Register and in at least three newspapers of general circulation in the State the percentage of conveyed land entitlement which each Native Corporation or Group has elected to include in the Alaska Land Bank Program as of the end of the preceding year.

Rationale:

This suggested Amendment saves the incentive of the Alaska Land Bank provisions of the Alaska National Interest Lands Conservation Act and satisfies the desire of the Alaska Federation of Natives that Native lands be protected from dissolution of the corporations and bankruptcy or creditor proceedings.

Senator Murkowski. Thank you. We appreciate your willingness to attach to your testimony your suggested changes to address your point of view.

Before we go on to the next witness, is this the testimony of the National Rifle Association of Alaska, or the National Rifle Association—nationally?

Ms. Jacobus. The testimony that I have given is two part. The part concerning native sovereignty and the effects of native sovereignty on fish and wildlife resources is the testimony of the national National Rifle Association, the national organization.

The testimony concerning the effect on minority shareholders represents the interests and beliefs of various natives and other concerned Alaskans who approached my law firm.

Senator Murkowski. We were advised by the executive director of the National Rifle Association on Friday that they felt the issue of sovereignty needed to be satisfactorily addressed. I did not garner that they were opposed to the proposed legislation, but expressly were concerned about the aspects of sovereignty. So we will just let the record reflect that.

Ms. Jacobus. I think, if I have not made it perfectly clear in my oral testimony, the written testimony is very clear that they are opposed to the effects of the legislation on the issue of native sovereignty. There are other portions of the bill that have nothing to do with native sovereignty.

Senator Murkowski. Well, I guess the obvious question is that if the native sovereignty question can be addressed, can it be addressed satisfactorily? You have submitted some material that obviously does address that. We are appreciative of that.

Ms. Jacobus. That is correct, Senator Murkowski. If the issue of native sovereignty can be satisfactorily addressed, the National Rifle Association would no longer oppose the legislation.

Senator Murkowski. Thank you.

We will go to our next witness, Mr. Greg Young of Juneau, AK. Mr. Young, please proceed.

STATEMENT OF GREG L. YOUNG, ON BEHALF OF THE TERRITORIAL SPORTSMEN

Mr. Young. Thank you, Mr. Murkowski.

For the record, my name is Greg Young and I presently reside in Juneau, AK. I am testifying on behalf of the Territorial Sportsmen. I have a written testimony, but I would like to deviate from it occasionally as I go along here, partially to reflect testimony and also your opening remarks.

Senator Murkowski. Your entire testimony will be entered into the record.

Mr. Young. Thank you.

First of all I would like to acknowledge your opening remarks, and also those of Senator Stevens. Had we had that information, or once we are assured that those remarks and disclaimers will be included into the proposed amendments, I think a lot of us will be a lot more happy with the amendments.

I do not think anybody is going to disagree that these proposed amendments can be interpreted by not only opponents and proponents as laying the groundwork for the possibilities of tribal sovereignty; I think all the testimony today has pretty much driven into the ground the fact that there are people very much opposed to tribal sovereignty. There are other parties that may in fact favor it.

I want to go on record specifically as opposing it because I feel that that is something we do not want to bring into Alaska. It is our feeling that these amendments as proposed have broad social and economic implications to all Alaskans and other Americans as well. We feel they are untimely and, in many instances, perfectly vague.

We do not feel there have been proper public hearings. I know again there has been a lot of discussion about that, but I would like to elaborate little bit.

Senator MURKOWSKI. Tell us what you think are proper.

Mr. YOUNG. Public hearings in the past, you have to understand the perspective of the average Alaskan, especially a non-Native Alaskan. Right now his biggest concern is how he is going to make next week's house payment, and whether or not he has a job tomorrow based on the economic conditions. So although it seems that there is a wide publication of the events and that there have been many of them scheduled, you have to understand that 70 or 80 percent of the people, although they may care, they do not understand the far-reaching implications and they have such pressing immediate needs that they may not have been able to attend.

In many instances the public hearings have been more I think to this point investigatory and have been bringing out the points and counterpoints and have not been in the form of workshops where we now start seeing these points and counterpoints distilled into what we hope are going to be the final wordings of the amendments.

Your opening remarks in essence were a lot of that distillation process that we would like to see, especially before it goes any further.

The 2-week period remaining open for testimony again to me seems a little bit short in that we do not know up to what point—I am assuming that after the 2-week period then the new wording will come out of the amendments and it would seem important that at that point in time that we again see what the wording will be so we can have a chance to comment on the points of that.

I wanted to bring up—most of these points have just been beaten to death, but again on the taxation issue, one thing that we have not yet heard discussed today was whether or not placing a residence on a tract of land would make it be considered "developed."

Senator MURKOWSKI. I am sorry? I did not hear you. Placing a what?

Mr. YOUNG. Placing a residence. For instance, in a municipality when you build a house on a piece of land, you face an assessment.

Senator MURKOWSKI. I am quite sure that would be the intention.

Mr. YOUNG. Because it is not revenue producing, but it does affect the tax base.

I also share the consideration for the fish and game management. I would just like to point out a few problems that we have going on up there right now that could be greatly affected by this. As you are aware, right now in Alaska we do not have State jurisdiction over the Marine Mammals Acts. There seems to be a real push to put the fish and game management into different entities' hands to manage them.

Before the Federal jurisdiction came into Alaska, when the State was managing it, I believe that there was hunting for walrus and polar bear open to almost anyone that could afford the cost of getting into the areas. Right now in Alaska we do not have access to the general sporting public to either of those species.

It is possible outside of Alaska to book a polar bear hunt if you have $12,000 to book it. That hunt specifically emphasizes using traditional methods and means not only to hunt but also for local transportation, clothing, food, and guides. It seems interesting that those areas have found a way to allow a completely traditional lifestyle to be turned into a cash-producing economy in the local area. It would be nice to think we could do the same thing in Alaska.

[The prepared statement of Mr. Young follows:]

Hearing
United States Senate

Alaska Native Claims Settlement Act Amendments
S.2065
August 4, 1986

Testimony of:
Greg L. Young
9719 Trappers Lane
Juneau, Alaska 99801

My name is Greg Young. I presently reside in Juneau, Alaska, the third largest city in Alaska and the largest in southeast. I am testifying on behalf of The Territorial Sportsmen Inc.

I am here to testify on the proposed amendments to the Alaska Native Claims Settlement Act.

These amendments as proposed have been interpreted by both opponents through previous testimony and proponents during drafting, as laying the ground work for common tribal control of corporate assets and [illegible] tribal sovereignty. They would exempt as yet undetermined amounts of land from municipal tax bases. They strip the Native individual of a chance to control his own destiny. They relegate many Natives to the same type of government controlled trust relationship that has shackled the self-determination of many Indians in the lower 48. This defeats the very intent of the Act which was to provide the Alaskan Native with the rights and resources to enter the mainstream of Alaskan life, while at the same time secure those important heritage lands upon which their culture evolved. The intent was to avoid the failures of the reservation based settlements of the lower 48 states and to avoid the racism, animosity and self- determination destroying stewardship relationship that still plagues these former settlements. When I came to Alaska in the mid 70's, it was a pleasant surprise to not see the hatred, distrust, and resentment perpetuated by the reservation system in the lower 48. What is the pressing urgency to strip Alaskans who are Natives of their individual rights within a common society and change them to Indians who will be set off as another one of those special groups incapable of supporting themselves and subsidized by various government programs and privileges.

It is our feeling that these amendments as proposed have broad social and economic implications to all Alaskans and to other Americans as well and are untimely and purposely vague. There have not been proper and adequate public hearings nor public explanation of the intricacies of these proposed changes to the people of Alaska.

The deadline for amendments is still more than four years away. The present rush to pass these amendments is in itself a warning that they are not in the best interest of the majority of Alaskans and that it is important to get them passed before too many people find out what they really mean.

The vagueness is typified by Sec. 5 of S.2065 that amends Sec.7a.(a)(1) allowing a Native Corporation to transfer its assets .... to a qualified transferee entity for no consideration .... A qualified transferee entity is an entity organized pursuant to or recognized by State or Federal law...... What is the legislative intent of this. Why does it prevent conveyance of fee title. Why can't it be simply spelled out? The same holds for Sec. 7c , which negates the intent of the original Act. Isn't this just a stepping stone to sovereignty? The intent of the original Act was to make Native people in Alaska subject to the same laws and privileges as other residents of the State. The required conveyance of land for local municipal government and the provision for temporary tax exemption of undeveloped lands further demonstrates the intent of the Act to vest the regulatory powers to the State and its local subdivisions.

The House did not conduct any hearings in Alaska on these amendments. Of the Senate hearings, there were none held in Juneau, Ketchikan, or Sitka. I believe the only one held in southeast Alaska was in Hoonah. The [illegible] days public notice and pretestimony registration requirements precluded the general public from participating.

Of the public hearings that were held there was no general explanation of the intent of the actual amendments and examples of how they would function; nor was there presentation and discussion of the effects on the general public of such issues as exemption of Native lands from the tax base. Where are the definitions as to what constitutes undeveloped lands; what are customary and traditional use of lands? Is building a home considered development? Where are the amendments to reimburse the State for the lost revenue base? Who is going to shoulder the additional tax burden to provide services and improvements to the people of Alaska including those who will be living on these exempted lands? What percentage of Alaska land will be removed from the tax base? [illegible] will be transferred to Tribal governments holding the power to prevent non-members from even crossing such lands, or living in said areas(Tyonek vs. Puckett).

What will happen to Fish and Game management? Alaska, and the Native population especially, is still suffering cultural, [illegible] and economic losses resulting from Federal control of marine mammals. A typical example under current "management" is polar bear hunting. In Alaska, polar bears can only be hunted by Natives for subsistence. Although this is of questionable constitutionality, the result has been a concentration of harvest of females and young that remain closer inshore while the larger males that range far out on the pack ice have been harvested less. There is no legal economic return from this harvest. Outside of Alaska a sport hunter can book a polar bear hunt for $12,000. The hunt is conducted emphasizing traditional methods with dog sleds, traditional clothing, native guides and local facilities. This provides the Native with an opportunity to live and practice a cultural lifestyle and earn cash dollars doing it. Fur seals and walrus are two other examples of the change from patterns of State management of local harvest and use to stringently regulated but poorly implemented and enforced "Federal management". Just how would management be implemented with overlapping State ,Federal, and local jurisdiction? Picture what would happen with possible a hundred or more groups competing for and harvesting the fish and game species crossing the various sovereign boundaries. Would a caribou belong to the area in which it was conceived, or born, or reared, or wintered? Who gets to harvest a king salmon returning to the headwaters of the Yukon river?

Almost daily we are bombarded by the media decrying the civil injustices being forced on the individuals of various countries. Activist groups are urging all sorts of sanctions against these injustices. What has happened to these same individual liberties of our own residents. The basic premise of our countries free enterprise system is the right of the individual to own and control his or her resources. These proposed amendments lay the ground work for extinguishing the Native individuals right to receive a legacy promised for so long. They provide a mechanism by which a stockholder can be liquidated at below fair market value. They set up a system wherein a small group of power brokers can over take control of the assets and resources promised to the individual as personal property.

We understand there are legitimate concerns over loss of heritage lands. We empathize with the frustrations of the drawn out conveyances and the cultural conflicts and confusion in changing to a corporate structure for governing the resources provided by the settlement. There are concerns that real estate taxes could gobble up lands. These issues can and should be dealt with through careful and equitable consideration. Tax exempt status was originally granted for twenty years following conveyance of the land. This could be extended for a reasonable finite length of time, not perpetuity, to deal with specific cases wherein beneficial use was not available at the time of conveyance. The existing corporate structure has the power to secure lands and resources for common use by the shareholders by majority consent of the individual shareholders. Protect their right to exercise this option. The Corporations also have the ability and should have the mandate to educate and assist their shareholders in the understanding, operation, and management of their assets through the Corporation.

Lets use more of the time available before 1991 to craft any needed amendments to the Act . Be straightforward in the language preserving the original settlement intent agreed upon by Native groups and the State and Federal Governments. Lets not create "Homelands" within our borders.

Thank you for this opportunity to present these views.

Senator MURKOWSKI. Thank you, Mr. Young. I share an observation. And it may be an incorrect one, but I think that there has been a noticeable lack of enthusiasm by the State of Alaska to take on marine mammal management. And I think that is a matter that should be addressed through the legislative representation and the State administration.

Mr. YOUNG. I fully agree, and I think that in the next couple of months we will see some change in direction.

Senator MURKOWSKI. This is a question for Ms. Jacobus. In your written testimony you assert that the original section, which is section 2(b), of the Native Claims Act will be repealed?

Ms. JACOBUS. Yes. That would be by the House bill.

Senator MURKOWSKI. I am curious to know how you arrive at that conclusion.

Ms. JACOBUS. Well, I arrive at it from several aspects.

First, because it is precisely the same numbering system that is used in the original act and therefore would act as a substitute for the original numbering system. And in addition and more importantly, that particular section that I believe would be repealed talks in terms of not estabishing any permanent racially defined institutions, rights, privileges, or obligations. But in fact, the legislation that is proposed both by the Senate and by the House would do exactly that. And as a result, it is my contention and it is the contention of the National Rifle Association that that would result in a repeal of section 2(b) which is the purpose section under the Alaska Native Claims Settlement Act.

If I might explain myself a little bit more, if the section, section 7, which deals with transferee entities is to remain in the current legislation, what would happen is the regional corporations would be allowed to transfer their assets to a racially defined institution and which to me would be in direct contravention of the original purpose section of the Alaska Native Claims Settlement Act.

Senator MURKOWSKI. Well, it is my understanding that section 2(b) of the House bill does not replace section 2(b) of the original bill. They are both free standing and there is no association.

Ms. JACOBUS. I know that is what Senator Stevens' office has said. However, from my experience as an attorney for over 13 years and from the experience of other attorneys with whom I have consulted who have even more experience than I do at legislative interpretation, none of us believe that to be the case. The fact is this is section 2, congressional findings; it is section 2(b), congressional findings and purposes. And that in my opinion would replace it.

Now if that is not the case, then it seems to me if our concerns are to be met, then you should have no objection to including the original language from the Alaska Native Claims Settlement Act in the new purpose section. However, I also believe that it would contravene what this legislation in fact does, which is to set up racially defined institutions.

Senator MURKOWSKI. Well, it is my understanding that this is simply free-standing congressional findings for the appropriate amendments. And in here it appears that where they amend ANCSA, they specifically refer to it. But I wouldn't dispute the opinion of any individual; but I would urge those who follow the legal profession to examine this and satisfy yourselves.

Ms. JACOBUS. Well again if that is in fact the case, then there should be no objection to including the original purpose language again in the amendments.

Senator MURKOWSKI. Well, I think we have to definitively determine whether we do have a disagreement here or not. But we would welcome your continued evaluation and that of anyone else that would care to address it.

Ms. JACOBUS. Thank you, Senator.

Senator MURKOWSKI. All right. I want to thank the members of the panel for joining us. We will move to the next bill. We are done with one bill. Would you believe that? We have three more to go.

I want to thank those of you who did testify and helped us construct a record on Senate bill 2065, more appropriately known as the 1991 amendment package. I think that we have gone into a good deal of housekeeping, which is necessary, and touched on some of the more delicate areas that needed a clear examination and comparative point of view. And we did receive them, and I am very grateful.

I would defend the hearing process. I do not know how we could have possibly advertised or appealed to the media in the State of Alaska, to publicize the hearings. And for those who felt perhaps they were not motivated or just did not get around to it or were somehow excluded from participating, I would remind you that you still have got 2 weeks from today, and we would appreciate anything that you would care to put into the record. You may mail it to my office direct, to Senator Murkowski, or if you want to mail it to the Energy and Natural Resources Committee, you may do that. It will get into the record, in any event.

With that, we will move over to Senate bill 485. And let me tell those of you who do not know what it is, this is a very, very important piece of legislation affecting our State of Alaska. It addresses the submerged lands issue. I again want everyone to understand that this will be taken separately; it will not be a part of the other Alaskan issues we have scheduled on this morning's docket. The need for this legislation arises out of the three statutes and out of some unfair practices, in my opinion, by the U.S. Government in implementing some laws.

Under the Alaska Native Land Claims Settlement Act, Alaska Native corporations are entitled to some 44 million acres of land. The State of Alaska is entitled to 104 million acres of land under the Statehood Act. In addition, by virtue of the Submerged Lands Act, the State is automatically entitled to submerged lands beneath, and I quote, "all navigable waters" in our State. These submerged lands are not charged against the State's 104 million acreage entitlement.

I understand that the State stands to pick up somewhere between 800,000 and perhaps a higher amount of additional acreage depending on the interpretation of how much land is under navigable waters.

Navigabilty is ultimately determined by the courts and is a costly, slow, and complicated process except for legal counsel—that is my addendum. Since this creates great uncertainty for the State over submerged land ownership, the Bureau of Land Management has adopted a survey manual. This manual sets guidelines of what water bodies would be most likely to be considered navigable by courts at a later date. These standards are greater than 50 acres for a lake and wider than three chains for a river. And a chain is how long, Mr. Bevinetto?

Mr. **BEVINETTO**. Sixteen rods.

Senator **MURKOWSKI**. Sixteen rods. And a rod? Well, anyway, if you do not know, you can look it up.

Waters of these size and greater are excluded from the public domain for conveyance to another party. By not conveying these lands in the first place, the BLM, "risk of land loss" by the receiving party is minimized. This appears to be a good system and has been applied in every State, except Alaska. In Alaska, the BLM has conveyed and charged against the acreage entitlement of the State and the Native submerged lands beneath all water bodies, including those greater than the BLM survey manual sized standard.

The result is one, for the Natives: If the courts determine at a later date submerged lands by Native corporations lie beneath navigable waters, they lose the acreage. For the State: The State has been conveyed and charged for submerged lands it is automatically entitled to, under the Submerged Lands Act. And three, lands have been given to the Natives that belong to the State because they lie beneath navigable water. If that doesn't confuse you, I will go on.

In the Alaska Lands Act, the Congress attempted to resolve this dispute by implementing a statute of limitations that essentially gave the States 5 years in which to challenge the corporations' ownership of the submerged lands in court through making the claim of navigability.

Last year this statute was extended for 1 year in hopes of legislation to resolve the issue once and for all. The statute of limitations is no solution; it puts the Government in a position of forcing upon the Alaska Natives and the State of Alaska needless and costly litigation. This is an extremely irresponsible position for the Government to be in, especially when a simple and equitable solution exists.

The bill we have before us today is that solution; it essentially repeals the statute of limitations. It guarantees the acceptability of the BLM survey manual to Alaska and memorializes an agreement between the Bureau of Land Management and the State of Alaska on how to rework past conveyances. This bill was devised through discussions between the Department of the Interior, the regional Native corporations, and the State of Alaska.

I want to commend those of you who played a role in developing that effort. A lot of hard work has gone into resolving the issue. I would urge my colleagues to support this legislation. And it is appropriate that we now go to the witness list.

I am going to combine rearrange the order of the witness list. I guess we will have Mr. Penfold come up all by himself. There might be some differences of opinion. That way, we can keep everybody separate.

Mr. Penfold is State Director for Alaska, Bureau of Land Management. We appreciate your being with us this morning. I hope that you have had an opportunity to observe the tenor of the witnesses on the last bill, and please proceed.

STATEMENT OF MICHAEL J. PENFOLD, STATE DIRECTOR, ALASKA, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. PENFOLD. Yes, sir, I did, and I think I am more pleased to be testifying on this particular bill than on the last one.

For the record, my name is Mike Penfold. I am BLM State Director from Alaska, and today I am testifying for the Department. It is a pleasure to be here because, Senator Murkowski, we endorse your comments that you just made. You hit the nail dead center on the head. We do support S. 485.

I have prepared remarks which we would appreciate being entered in the record.

Senator MURKOWSKI. They are entered in the record as if read.

Mr. PENFOLD. Thank you, sir, and I will make a few summary remarks. As I said, we favor S. 485 and have in the more detailed statement asked for some minor adjustments which I think are not substantive, but they do help clarify a few points in the bill.

The bill would confirm a policy and memorandum that you just mentioned, Senator Murkowski, that has been worked out between the Department of the Interior and the State of Alaska and Native corporations and has been working very well for the last 3 years. It is the same policy that has been applied in the lower 48, a longstanding BLM policy and translated into written form in our Manual of Surveying Instructions that you mentioned. My detailed paper discusses how that policy is applied and I will skip over that.

The question of navigability and nonnavigability of water bodies and the chargeability of submerged lands has been an issue of serious contention since the enactment of the Alaska Statehood Act and ANCSA.

In particular, the State believes that many of the submerged lands that have been conveyed to the Native corporations should have been recognized as belonging to the State. Native corporations have found it necessary to challenge the initial navigability decisions to ensure that they will not be deprived of any portion of their entitlements. The bill would help take BLM out of the business of determining navigability on those major bodies of water.

The State and Native corporations have long contended that the Manual of Surveying Instructions should be followed in Alaska lands when they are conveyed. Native corporations have asserted that they should not be charged for federally owned submerged lands which they have selected.

The memorandum of agreement that you mentioned was worked out. That was further translated into final rulemaking, by the Department of the Interior. The basic policy provisions of that agreement are that submerged lands beneath all water bodies shall be meandered in accordance with the principles of the Manual of Surveying Instructions, that Alaska Native corporations and the State shall not be charged for submerged lands beneath water bodies that are meandered, and those beds of tidal waters which were reserved to the United States at the time of statehood and are less than 50 acres in size or 3 chains in width will not be meandered and will be charged against Native and State entitlements.

We feel there are several benefits in following what this bill would confirm and the policies that we have established and worked out. The Native corporations and the State will not receive less land than Congress specified; the treatment of landowners in the State of Alaska will be the same as the treatment in the lower 48; there is less likelihood of protracted litigation; and a major source of friction between all of us in Alaska can be eliminated.

Just to touch on another point in regard to the statute of limitations: The United States, the State of Alaska, and the Natives have always assumed that the 12-year statute of limitations in the Quiet Title Act has always applied and will continue to apply after the repeal of section 901(a). But in the interest of clarity, we suggest that this expressly be stated within the provisions of section 901 as amended by S. 485.

We have a few other suggestions, one having to do with the title of the act that we would make and three other clarifying amendments which basically make clear that this act does not affect some agreements and exchanges that have been made sometime in the past.

And with that, I would be happy to answer any questions, Mr. Chairman.

[The prepared statement of Mr. Penfold follows:]

AUG 4 1986

STATEMENT OF MICHAEL J. PENFOLD, STATE DIRECTOR, ALASKA, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 485, A BILL "TO AMEND THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980 TO CLARIFY THE TREATMENT OF SUBMERGED LANDS AND OWNERSHIP BY THE ALASKAN NATIVE CORPORATION."

I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of the Interior's position on S. 485.

S. 485 would amend section 901 of the Alaska National Interest Lands Conservation Act of 1980, generally referred to as ANILCA, to eliminate the provisions relating to the 6-year statute of limitations for the filing of civil actions concerning 1) the ownership by a Native corporation or Native Group of a parcel of submerged land conveyed to such corporation or Group pursuant to either ANILCA or the Alaska Native Claims Settlement Act of 1971 (ANCSA), or 2) a decision by the Secretary of the Interior that the water covering such parcel is not navigable; and the 7-year limitation if the interim conveyance or patent was executed before the date of enactment of ANILCA. It would also repeal other provisions of section 901 that relate to that statute of limitations.

S. 485 would add three new subsections to section 901 of ANILCA. Subsection (d) would contain two paragraphs.

Paragraph (1) would establish the requirements for, and the procedures to be used in, "meandering" lakes, rivers and streams, whenever the Secretary surveys lands selected by an Alaskan Native, a Native corporation, or the State, pursuant to ANCSA, the Alaska Statehood Act, or ANILCA.

Paragraph (2) of new subsection (d) would provide that whenever the Secretary, pursuant to the ANCSA, ANILCA, or the Alaska Statehood Act, conveys to an Alaska Native, a Native corporation, or the State, land which abuts or surrounds a lake, river or stream which is required to be meandered, all right, title and interest of the United States, if any, in the land under such lake, river, or stream lying between the uplands and the median line or midpoint, shall vest in and shall not be charged against the acreage entitlement of such Native or Native Corporation or the State. Paragraph (2) also provides that the right, title and interest vested in such Native or Native corporation shall be no greater an estate than the estate he or it is conveyed in the land which abuts or surrounds the lake, river, or stream.

New subsection (e) would incorporate into section 901 the provisions of the March 28, 1984, Memorandum of Agreement between the Department of the Interior and the State of Alaska and ratify it as to the duties and obligations of the United States, as matter of Federal law.

New subsection (f) would provide that nothing in section 901 shall be construed to change sections 12(b)(1) and 12(b)(2) of Public Law 94-204, which pertain to certain conveyances by the Secretary to Cook Inlet Region, Incorporated.

We favor enactment of S. 485.

It would amend section 901 of ANILCA to make its provisions conform to the policy adopted by the Department of the Interior and agreed to by the State of Alaska and Native corporations, concerning the ownership of, and chargeability for, submerged lands.

To add perspective to S. 485, I will briefly sketch out the historical background of the Department of the Interior's current policy on submerged lands.

Since the passage of the Act of May 18, 1796, it has been the law that the title to lands bordering on nonnavigable streams extends to the center of the streams. Further, in 1891, in the case of Hardin v. Jordan, 140 U.S. 371, the Supreme Court decided that the title of grantees of lands bordering on nonnavigable lakes or ponds extends to the center of the lake or pond. The Department has applied these principles consistently to land conveyances in both the lower 48 states and Alaska, except as to selections by the State of Alaska under the Alaska Statehood Act and to selections by Native Corporations under the Alaska Native Claims Settlement Act.

Thus, when a State or other entity, other than the State of Alaska or a Native Corporation, was entitled to select a certain amount of land which included land covered by nonnavigable waters, the grantee was not charged for the submerged lands when the acreage of the remaining entitlement was calculated. This longstanding policy is reflected in the Bureau of Land Management's (BLM) Manual of Surveying Instructions (Manual), which includes instructions for meandering rivers and lakes and calculating the acreage of fractional sections. The Manual provides that navigable bodies of water, as well as all lakes equal to or larger than 50 acres, and streams and rivers equal to or wider than 3 chains (198 feet), are to be excluded from the public lands.

Section 6 of the Alaska Statehood Act allowed the State of Alaska to select 103.35 million acres of vacant, unappropriated, unreserved public land. That Act also provided that the State took title to submerged lands beneath navigable waters that had not been reserved to the United States under the Submerged Lands Act or other law. However, section 6(g) of the Alaska Statehood Act provides that where lands selected by the State are unsurveyed, the Secretary of the Interior is to survey the exterior boundaries of the selected area and issue a patent for such selected area in terms of the exterior boundary survey. In accordance with this instruction, BLM surveyed only the perimeter of the State's selections and did not meander the submerged lands within the selected areas.

Under ANCSA, Native corporations were entitled to select 44 million acres of public lands. In this context, the Department interpreted the term "public lands" to include submerged lands beneath nonnavigable waters.

A final determination as to the navigability of a body of water can only be made by a court, and such judicial determinations have never been issued on the overwhelming majority of lakes and rivers in Alaska. Thus, BLM, in its efforts to convey the lands that have been selected by the State and the Native corporations, has been required to make initial determinations as to the navigability of hundreds of lakes and rivers.

If BLM found that a body of water within a Native selection is navigable, the land underlying the waterbody was held to belong to the State and was not charged against the Native corporation's entitlement. If the waterbody was found to be nonnavigable, the selected lands were conveyed to the Native corporation and charged against its entitlement - an apparent contradiction of the Department's longstanding policy in the lower 48 states. Similarly, when the State made selections of lands containing nonnavigable bodies of water, BLM charged the submerged lands against the State's entitlement.

As a result, the navigability and nonnavigability of water bodies, and the chargeability of submerged land have been issues of contention since the enactment of the Alaska Statehood Act and ANCSA. In particular, the State believes that many of the submerged lands that have been conveyed to the Native corporations should have been recognized as belonging to the State. Native corporations have found it necessary to challenge the initial navigability decisions to insure that they will not be deprived of any portion of their entitlements.

Further, the State and the Native corporations have long contended that the Manual should be followed when lands in Alaska are conveyed. The Native corporations have also asserted that they should not be charged for federally-owned submerged lands which they have selected.

In an attempt to resolve submerged land inequities, the involved parties negotiated a change in policy concerning the chargeability of submerged lands. That policy was published in the Federal Register of December 5, 1983, and was subsequently reiterated in a March 28, 1984, Memorandum of Understanding between the State of Alaska and the Department of the Interior, and in a final rulemaking amending the provisions of the Alaska Native Selection regulations (43 CFR 2650) that was published in the Federal Register on April 19, 1985.

The basic provisions of that policy are:

- Submerged lands beneath all water bodies shall be meandered in accordance with the principles in the Bureau of Land Management's Manual of Surveying Instructions. Whenever feasible, photogrammetry is to be used in surveying meander lines and planimetry is to be used for acreage computations of the upland lots on plats of survey.

- Alaska Native corporations and the State shall not be charged for submerged lands beneath water bodies that are meandered in accordance with the new policy (i.e., in accordance with the Manual or subsequent regulations);

- Those beds of tidal waters which were reserved to the United States at the time of statehood and are less than 50 acres in size or 3 chains in width will not be meandered and will be charged against Native and State entitlements.

Implementation of this policy is having the following benefits:

- The Native corporations and the State are not receiving less land than Congress specified, since there is no charge for submerged lands that are meandered.
- Treatment of landowners in Alaska is consistent with the treatment of landowners in the lower 48 states.
- There is less likelihood that protracted litigation will occur, thus reducing delays in issuing conveyances.
- Since the State, the Native Corporations, and the Department of the Interior have concurred in the new policy, a major source of friction has been removed.

Some problems concerning navigability decisions were addressed by the Congress in section 901 of ANILCA, which established time frames and procedures for challenging such decisions. Specifically, section 901(a) provides that the ownership by a Native corporation or Native group of a parcel of submerged land conveyed to such corporation or Group pursuant to either ANILCA or ANCSA, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to a judicial determination unless a civil action is filed in the United States District Court within 6 years after the date of the execution of the involved conveyance, if the conveyance was executed after December 2, 1980, the date of enactment of ANILCA. A 7-year statute of limitations applies if the conveyance or patent was executed before the date of enactment of ANILCA.

Although the Department's current policy concerning the chargeability of submerged lands has eliminated many of the problems associated with conveyances of selected lands in Alaska, the problem concerning navigability decisions remains unresolved. At issue are BLM's navigability decisions, and their effect on hundreds of conveyances made to Native corporations and the State.

The 5-year statute of limitations established by section 901(a), as originally enacted, began to run on December 2, 1985. Enactment of P.L. 99-258 extended the statute to 6 years. Thus, the State must either challenge all the conveyances that are subject to the 6-year statute of limitations, or risk the possibility of being precluded from challenging some of the conveyances and decisions. S. 485, among other things, would repeal this provision.

The United States, the State of Alaska, and the Natives have always assumed that the 12-year statute of limitations in the Quiet Title Act has always applied, and will continue to apply after the repeal of section 901(a), but, in the interest of clarity, we suggest this be expressly stated within the provisions of section 901 as amended by S. 485.

As I said earlier, we favor enactment of S. 485 because it enacts into law the current policy of the Administration with regard to submerged lands in Alaska and eliminates the possibility of much litigation. However, we suggest that it be amended in several respects:

1) We suggest that the title of the bill be amended to read " . . . ownership by Alaska Native corporations and the State of Alaska"; and

2) We suggest also that proposed new subsection (f) be amended to read:

(f) nothing in this section shall be construed to

(i) change the provisions of sections 12(b)(1) and 12(b)(2) of the Act of January 2, 1976 (89 Stat. 1151);

(ii) change the provisions of section 506(c) of the Alaska National Interest Lands Conservation Act (94 Stat. 2409); or

(iii) alter or amend any exchanges consummated among the United States, Alaska Natives, Native corporations, and the State of Alaska.

The provisions of paragraphs (i) and (ii) of subsection (f) are required to continue the exclusion of the conveyances of submerged lands under section 506(c) of ANILCA. Paragraph (iii) is necessary to assure that negotiated charges to entitlement will not be disturbed, thus avoiding new disputes.

This concludes my prepared statement. I will be pleased to answer questions.

Senator MURKOWSKI. Thank you. Can you explain why the previous administrations or others did not support for Alaska the same type of treatment that was evidenced throughout the rest of the United States?

Mr. PENFOLD. No, sir I cannot. Clearly, though, as the issue became contentious a few years back and our people looked clearly at the language in the various laws affecting us and Alaska, it became clear to us that the difference of policy between what was being done outside of Alaska and what was being done inside of Alaska was not mandated in those laws so that it made sense in the interest of fairness and in law to make the policies equal.

Senator MURKOWSKI. There has been a suggestion and it may be premature at this time, but some of the environmental groups have, I understand and I do not want to preclude their testimony, had some objection to this concept. And from the standpoint of the Bureau of Land Management in your previous experience with it as an agency, can you comment on the effect that it has on the standpoint of environmental quality or environmental standards or is there a unique concern here that is unique to Alaska as opposed to other areas of the United States?

Mr. PENFOLD. I don't think there is anything that unique. The concern that I have heard voiced has to do with additional acreage being taken out of conservation units. We have looked at that issue and we find that this particular bill does not result in significant additional acres coming out of conservation units. The acreage in conservation units has already been selected. No additional selections would be necessary in conservation units.

I believe you will have a chance to hear from conservationists themselves, today.

Senator MURKOWSKI. You made a reference to the application of the Quiet Title Act to Alaska, and I understand negotiations are going on to resolve this issue throughout the Nation. I am wondering wouldn't applying that act to Alaska only in effect single it out if negotiations are currently ongoing?

Mr. PENFOLD. Sir, I don't know what the status of negotiations are on that. I would be happy to supply an answer.

Senator MURKOWSKI. We would appreciate it if you would supply that for the record.

[The information referred to follows:]

Negotiations with reference to the Quiet Title Act are ongoing and include Alaska. Whatever bill is agreed to and submitted to Congress will apply to Alaska.

Senator MURKOWSKI. Do you have an idea, for the record, what is in dispute? I said 800,000 acres and then somebody said a million. You people are in the land inventorying business.

Mr. PENFOLD. Yes, sir. We have not made our own independent calculations. We have taken a look at the State estimates and how they came about it. My staff advises me that the way they went about making those determinations looked to be professionally sound. As I say, we have not made our own calculation.

Senator MURKOWSKI. So, you basically support the State's process.

Mr. PENFOLD. Yes, sir.

Senator **Murkowski**. I have no further questions. Thank you very much for being with us today and we appreciate your support of 485. I might ask you one other question: Do you know if there are any other Federal agencies, OMB or anything else, that are opposed to this to your knowledge? I do not know why OMB would be, necessarily.

Mr. **Penfold**. This has been coordinated with OMB and the Department of Justice.

Senator **Murkowski**. So, you do not know if any bad guys are out in the wilderness?

Mr. **Penfold**. The statement has been cleared by OMB.

Senator **Murkowski**. Thank you very much.

All right. We will move to panel 9: Mr. John Katz, I think we have seen Mr. Katz someplace else, representing special counsel to our Governor; Ms. Martha Fox, special assistant to the attorney general; and Ms. Janie Leask, president, Alaska Federation of Natives, accompanied by Mr. Don Mitchell.

Ann, do we have a table big enough for Lloyd Meeds? I think so. He is attorney for Calista Corp. And I should indicate Hon. Lloyd Meeds; Mr. Nelson Angapak, president of Calista Corp. And that is it. We have put 9 and 10 together.

I guess John Katz you are first it says here, unless you want to defer to the lady, Martha Fox.

STATEMENT OF JOHN W. KATZ, DIRECTOR, STATE/FEDERAL RELATIONS AND SPECIAL COUNSEL TO THE GOVERNOR OF ALASKA, ACCOMPANIED BY MARTHA FOX, SPECIAL ASSISTANT ATTORNEY GENERAL, OFFICE OF THE GOVERNOR OF ALASKA

Mr. **Katz**. For the record, my name is John Katz. I am director of State/Federal relations and special counsel to the Governor. With me today is Martha Fox, who is a special assistant attorney general in our office.

With the chairman's permission, I will submit my written statement for the record and summarize it.

Senator **Murkowski**. The chairman is always relieved to get written statements for the record.

Mr. **Katz**. We strongly support S. 485. This legislation is the product of literally years of analysis and discussions between the Interior Department, the State of Alaska, and the Alaska Federation of Natives. We believe that those are the three principal parties that are affected by the acreage chargeability and navigability issues involved in this legislation.

The legislation consists of two principal parts. The first would apply the Bureau of Land Management Survey Manual's acreage chargeability provisions to Alaska Statehood and Settlement Act land transfers.

Under those survey rules, lakes 50 acres and larger and streams 198 feet and wider would not be charged against the selection entitlement of the State or Alaska Native corporations.

For decades, those rules have been applied in the lower 48 States although the precise quantity of acreage is sometimes varied in accordance with amendments to the BLM survey manual.

These rules were not applied in Alaska. There was no congressional direction that we have ever been able to find that would justify such a deviation. In 1983 Secretary Watt, after careful study and deliberation and much public input, changed the rules to reflect the treatment of Alaska statehood to reflect the treatment of land conveyance in the lower 48 States.

Shortly after that, two conservation groups initiated litigation in the U.S. District Court for the District of Columbia. That litigation was dismissed by the judge. While the principal focus of his decision was on the question of standing, I think that a close reading will also indicate that he had serious reservations about the plaintiffs' contentions on the merits.

We believe that the consideration of equal treatment and equity between the State of Alaska and Alaska Native corporations on the one hand and public land entrance in Alaska and public land entrance in the lower 48 States, in and of themselves, would dictate that Secretary Watt's decision be validated by legislative action.

So, we think that the equity issue is determinative in itself. But I think it is useful to go beyond that and look at the land management considerations.

According to studies done by the State of Alaska, we would receive approximately 460,000 additional acres as a product of this policy. Native corporations would receive about 270,000 acres.

Those studies divided the State into physiographic regions and made very careful extrapolations from the currents of water and land within each region of the State.

In general terms, those figures have been corroborated by other studies including an earlier study of the old Federal State Land Use Planning Commission for Alaska. These studies and their conclusions have been in the public domain for over 2 years, and we do not think that there has been any successful refutation of either the computations or the methodology that was utilized.

With respect to the impact on conservation system units, it should be noted that the State of Alaska has selected very little acreage within CSU so the impacts would be minimal. With respect to Native corporations, the principal impacts would be in the Bristol Bay and Calista regions. In many instances, the Native corporations in those regions supported the creation of CSU's around them, and we do not think that they should be penalized by that decision.

Also, there has been some discussion of the possibility of granting native corporations the opportunity to voluntarily trade out their selections within CSU's onto adjoining public lands.

The second portion of the legislation would repeal the statute of limitations contained in section 901. While it is true that the State of Alaska originally supported the inclusion of section 901, further legal research and, more importantly, experience has indicated that that was a mistake. For that reason, the State of Alaska has sued in the U.S. District Court in Alaska, challenging the constitutionality of section 901 on the grounds that it violates the equal footing doctrine of the Constitution.

Moreover, experience shows that 901 was a mistake. Its original purpose was to bring certainty to the submerged lands and navigability process. In fact, it has done just the opposite. The State, pursuant to its public trust responsibilities, feels that it must sue to protect the public's interest in waterways and water bodies in Alaska.

Before the enactment of the 1-year extension of the statute of limitations, earlier this year the State was considering litigation on possibly as many as 150 waterways and water bodies. Each year that situation would be compounded by additional lawsuits, as the statute of limitations approached.

Beyond this, every lawsuit involves great cost and great burdens for the parties involved. In addition, no matter what the situation, it creates acrimony and conflict. We are further concerned that that Alaska port system could be inundated by navigability litigation.

Lest we have any lingering question about the impact of the statute of limitations, we have a graphic example now to point to. Earlier this year, the State was compelled to bring litigation involving the Tazimina River in the Bristol Bay area. Because of a doctrine of public land law that required us to sue to challenge the navigability of the entire river system even though we were only concerned about one segment, the State ended up suing the Federal Government, the Bristol Bay Regional Corp., and three village corporations.

While that suit was subsequently dismissed without prejudice, I think that it shows what we can expect in Alaska if in fact that situation is multiplied literally hundreds of times throughout the State.

In conclusion, we feel that the legislation pending before you would accomplish congressional purpose as we understand it from prior enactments and statements. First, it would assure that both Alaska Native corporations and the State of Alaska will receive their full land entitlements.

Second, it will bring a far greater degree of certainty to the process than would the approach that is now embodied in the lands legislation. In this regard, interestingly enough, the approach that we are currently suggesting is a variant of a section of ANILCA that was originally passed by the House in 1980.

Third, there is no question that this approach would significantly reduce conflict. What would occur is that the situation which exists in the lower 48, with respect to submerged lands challenges, would be approximated in Alaska.

In the lower 48, submerged lands litigation only occurs when real interests are involved—for example, the possible existence of oil and gas rights or hard rock minerals. It is not stimulated artificially by a statute of limitations which has no relationship to resource conflicts, as is currently the case in Alaska.

Mr. Chairman, that concludes my remarks. I think I would like to respond very quickly to two questions which you posed to the prior Federal witness.

With respect to the application of the Federal Quiet Title Act to Alaska, the State has never had any question that that act does apply. However, as you pointed out, there are negotiations going on now involving many States, because this is an issue that affects all 50 States and the Federal Government. It may well be that those negotiations either lead to a compromise solution or that the Congress is willing to legislate in any event.

We do not want to fix the Federal Quiet Title Act as it applies to Alaska at this given point in time, and therefore all that we request is that while the act is we recognize applicable to Alaska, that it be made ambulatory so that we can take advantage of whatever progress occurs.

With respect to the question that you asked about what source there might be for the Federal policy that existed in Alaska prior to 1983, two things I think are worth noting.

First, the policy did not apply to public land entrance under the homestead and other individual entry laws. So there is an additional element of discrimination as it affects State and native conveyances.

Second, there is language in both the Alaska Statehood Act and in the Alaska Native Claims Settlement Act which refers to the survey of exterior boundaries. From that language Federal policy people prior to 1983 made what we think is an extremely erroneous extrapolation to say that because there is language relating to exterior boundaries, that none of the usual rules of meanderability and chargeability would apply within those exterior boundaries. And we think that is wrong as a matter of law and as a matter of policy.

Thank you.

[The prepared statement of Mr. Katz follows:]

TESTIMONY OF JOHN W. KATZ, DIRECTOR OF STATE/FEDERAL RELATIONS AND SPECIAL COUNSEL TO THE GOVERNOR OF ALASKA, BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

AUGUST 4, 1986

Mr. Chairman and Members of the Subcommittee:

My name is John W. Katz, Director of State/Federal Relations and Special Counsel to Governor Bill Sheffield of Alaska. Before this, I was Commissioner of the Alaska Department of Natural Resources. With me today is Martha Fox, Special Assistant Attorney General. We appreciate this opportunity to testify on the submerged lands issue, which is of such great significance to the state and Alaska Native corporations.

The issue here centers on state ownership of lands underlying navigable waters in Alaska. In accordance with the Submerged Lands Act, the Alaska Statehood Act, and constitutional principles of equal footing, ownership of the beds of most navigable rivers and lakes in Alaska automatically vested in the state on the date of statehood. However, under Section 901(a) of the Alaska National Interest Lands Conservation Act (ANILCA), the state has only a limited period of time in which to claim title to riverbeds and lakebeds underlying navigable waters that have been conveyed to Alaska Natives or Native corporations by the federal government.

Because of disputes over the proper criteria for determining navigability, and the procedures to use in surveying and conveying public lands in Alaska, the Department of the Interior (DOI) has conveyed hundreds of riverbeds and lakebeds claimed by the state to Native corporations, and has charged the submerged lands against their acreage entitlements under the Alaska Native Claims Settlement Act (ANCSA). The same situation with regard to chargeability of acreage exists for conveyances to the state under the Alaska Statehood Act. This practice and the limitations period in Section 901(a) raise the potential for extensive litigation to quiet title to submerged lands that have been conveyed to Native corporations.

The State of Alaska strongly supports the enactment of S.485 for two principal reasons. First, it would permanently repeal the statute of limitations provided in Section 901(a) of ANILCA. As a consequence, much expensive and unnecessary litigation would be avoided, and the pattern of navigability lawsuits in Alaska would approximate that of the Lower 48 states.

Second, S.485 would give legislative sanction to the 1983 decision of the Secretary of the Interior to apply the Manual of Instructions for the Survey of Public Lands of the United States (1973) to state and Native conveyances in Alaska. This legislative confirmation would alleviate much of the problem concerning submerged lands and acreage chargeability and would ensure equality of treatment between such conveyances and the transfer of public lands in other states. S.485 reflects a consensus among the state, the Alaska Native community, and the Department of the Interior as to the best resolution of the issue. The proposed legislation is conceptually similar to Section 918 of H.R.39, as it passed the U.S. House in 1979. That provision was replaced in the Senate in favor of Section 901.

Section 901 of ANILCA

Section 901 of ANILCA was an attempt to guarantee that Native corporations would not lose a portion of their land entitlement under ANCSA as a result of judicial findings of navigability. This was done by establishing a time period after which the State of Alaska could no longer assert state title to riverbeds and lakebeds conveyed to Natives or Native corporations.

Because of the time limitation in Section 901 (which was extended for one year by passage of H.R. 3851), the state must begin to file lawsuits after December 2, 1986, to assert its claims to navigable waterbodies that have been conveyed to Native corporations, or lose the right to claim title. Last February, during the hearings on H.R. 3851, we told you that there were approximately 150 waterbodies under evaluation by the state for possible institution of navigability litigation during 1986. Because of the one-year extension obtained by passage of H.R. 3851, the decisions on whether to bring these suits have been put off until 1987. However, it is inevitable that, as long as there is a limitations period on the time which the state has to assert title, there will be a large number of cases brought by the state each year to preserve its claim of title to certain submerged lands.

Litigation would be costly and time consuming not just for the state, but also for the federal government, regional native corporations, and village corporations. Moreover, the judicial system could be inundated by largely unnecessary litigation. This can easily be illustrated by the complaint filed by the state on the Tazimina river system last February. The suit was brought prior to the one-year extension of the limitations period in Section 901. Although the particular conveyance that was subject to the limitations period only involved part of the Tazimina River, applicable case law requires that navigability litigation be brought on the entire river system. As a result, the state was compelled to file the complaint against the federal government, a regional corporation, and three village corporations. That complaint was dismissed without prejudice last month upon stipulation of all parties.

Unfortunately, navigability litigation will perpetuate, instead of end, the conflicts and uncertainties regarding acreage chargeability and ownership of submerged lands in Alaska. The problem is further aggravated by the relatively slow progress of ongoing efforts to establish judicial criteria for navigability determinations in the state.

It is true that the state and many others originally supported the language in Section 901. However, experience and further legal research have shown that the proponents of this approach were in error. Underlying the Section 901 controversy is the basic principle that pursuant to the equal footing doctrine, the state took title to submerged lands beneath navigable waters upon entry into statehood. Although all states currently must deal with the limitations period in the Quiet Title Act of 1972, no other state has a provision comparable to Section 901 of ANILCA placed on its ability to assert sovereign land claims.

Furthermore, the sheer magnitude of the task of identifying land that might be subject to the limitations period in sufficient time to bring an action under Section 901 puts an immense burden on the state. As I mentioned earlier, there is continuing uncertainty concerning the criteria for determining navigability in Alaska. In addition, much of the land being conveyed by the federal government in Alaska has yet to be surveyed. As a result, many land transfers are accomplished by interim conveyances or tentative approvals to Natives, Native corporations, or the state. Existing conveyances are often inaccurate because of poorly prepared survey plats, poor photographing or mapping, or lack of mapping.

For these reasons, the State of Alaska filed suit in December, 1981, challenging the constitutionality of Section 901(a) on equal footing and due process grounds. The case was stayed at the request of all of the parties in the spring of 1983, so that alternative remedies could be pursued in Congress. At that time, the parties were in the preliminary stages of discovery. After several extensions, the stay expired last fall. Since then, there has been no further activity on the case.

Because of the situation that I have described, the existence of the limitations period provokes litigation by the state, simply to preserve its ability to claim title to submerged lands. To prevent that result, S. 485 would establish a situation comparable to that found in other states, where litigation occurs only when specific interests, such as oil and gas rights, are involved. Since the artificial stimulus of an unnecessary statute of limitations would be removed, lawsuits involving only real disputes would be spread over many years.

Use of the BLM Survey Manual

The other significant and related issue concerning ownership of submerged lands in Alaska arose out of the initial failure of DOI to use the rules of survey contained in the Manual of Instructions for the Survey of the Public Lands of the United States (1973). I would like to emphasize that these standard rules of survey are used for conveyances to all other states and public land entrants.

The rules require that only uplands be surveyed. Lakes 50 acres or larger and rivers and streams 198 feet in width or wider are segregated from the public lands. The recipients of conveyances from the federal government are charged only for the amount of public land identified by a proper survey. Riverbeds and lake bottoms that meet the criteria set out above are not included in that figure. Except for rivers and lakes smaller than the administrative criteria, navigability determinations do not affect the amount of land conveyed in fulfillment of acreage entitlements. There is no reason to believe that Congress intended that a different survey and conveyance procedure should apply to conveyances to the state or Alaska Natives.

Beginning in 1981, the state, the Natives, and the Department of the Interior began discussions on alternative ways of solving the problems resulting from Section 901 and the survey problem just described. In 1983, the three parties agreed to a solution: the statute of limitations should be repealed. In addition, the traditional procedures for segregating waterbodies set out in the BLM survey manual should be applied in Alaska as elsewhere.

On December 5, 1983, the Interior Department published a notice in the Federal Register announcing its decision to use the BLM survey manual rules in Alaska. The Sierra Club and the Wilderness Society filed suit in the U.S. District Court for D.C., challenging the validity of that action and the process used to reach the decision. Plaintiffs' complaint was dismissed by the U.S. District Court principally for lack of standing. That ruling has been appealed, and briefing should be completed this fall.

The state, the BLM, and the Natives have worked to arrive at an accurate estimate of the amount of acreage which would be affected by the prospective application of the Department of the Interior's 1983 decision to follow the standard rules of survey. That estimate indicates that a maximum of about 460,000 acres of uplands would be conveyed into state ownership, and 270,000 acres into Native ownership, as a result of using the standard rules of survey for determining acreage chargeability. These estimates are based on a detailed analysis of the various physiographic regions of Alaska. All interested parties have been presented with the opportunity to examine and comment on the rationale for these figures. No alternative figures or methodologies have ever been presented.

Certain environmental groups have expressed concern that adoption of the standard rules of survey would increase inholdings in conservation system units (CSU's) in Alaska. Because there are few state inholdings in CSU's, the additional state conveyances would generally not affect these units. Although additional Native inholdings within CSU's would occur, some of these would be created in any event as a result of successful assertions of navigability by the state, where submerged lands have been conveyed to a Native or Native corporation. A proposal has been made to deal with the Native inholdings involved by permitting corporations to convey such interests for the right to select alternative lands elsewhere.

Mr. Chairman, we urge the Subcommittee to support passage of S.485 as the best resolution of the submerged lands issue in Alaska. Enactment of this legislation would ensure that both the state and Alaska Natives would receive their full entitlements under the Statehood Act and the Alaska Native Claims Settlement Act. The legislation would also prevent unnecessary litigation and expense to the state, the federal government, and Alaska Natives.

Thank you for this opportunity to appear here today. We would be pleased to answer any questions which you might have.

Senator MURKOWSKI. Thank you, Mr. Katz, for that very complete statement covering submerged lands and the background. And thank you for responding to the two questions that I had asked of Mr. Penfold.

Ms. Fox, do you have any statement?

Ms. FOX. No, I do not.

Senator MURKOWSKI. Ms. Janie Leask, before I introduce you, I might indicate that we have received another letter from one of the gubernatorial candidates that we will enter into the record on S. 2065. I just want to make those mentions because sometimes the mail is a little slow coming down from Alaska. We had one earlier from Walter Hinkle and we have another one for the record from Mr. Bob Richards.

[The letters from Mr. Richards follows:]

JULY 29, 1986.

Senator MALCOLM WALLOP,
Chairman, Public Lands, Reserved Water and Resource Conservation Subcommittee,
U.S. Senate, Washington, DC.

Regarding: S 2065 and HR 4162 (Alaska Native Claims Settlement Act Amendments of 1986)

DEAR SENATOR WALLOP: On July 28, 1986 the House of Representatives passed HR 4162 (Alaska Native Claims Settlement Act Amendments of 1986). The Senate subcommittee on Public Lands, Reserved Waters and Resource Conservation has scheduled hearings in Washington, D.C. August 4, 1986 on this bill and its Senate counter-part S 2065.

Both bills make sweeping changes to the 1971 Alaska Native Claims Settlement Act. The State of Alaska was an active participant in the 1971 settlement with a commitment of 500 million dollars from its own treasury. The settlement was a complex package involving the Federal Government, the State Goverment and the native community. For this reason, any changes in the Alaska Native Claims Settlement Act must be prepared carefully and with full participation of all parties—*including* the Alaskan public.

It is the position of the following Alaskan Republican Gubernatorial candidates that the proposed "1991 Amendments" being considered are premature and must be delayed until as least next year following exctensive review by all Alaskans.

It is absolutely imperative that any legislative action be carefully crafted so that the original purposes of the 1971 Settlement be retained and Alaska is not socially and economically divided along racial lines.

Despite the good intentions of the Alaska delegation, the complex issues surrounding the ANCSA amendments have not been adequately publicized throughout Alaska. The so called "1991 Amendments" are of a very complex and serious nature and cannot be considered merely technical amendments to the original agreement. Alaskans have not been granted adequate time in which to discuss and fully understand the far-reaching consequences of these amendments. It is absolutely unnecessary that the amendments be passed at this time. Therefore, we collectively request that the Senate delay further consideration until next year.

We respectfully request that this statement be read at the August 4, 1986 hearing in Washington D.C. and it be entered into the hearing record.

Mr. Joe Hayes, Mr. Bob Richards, Mr. Walter Hickel, Mr. Ron Somerville, Mr. Bob McGrane, Senator Arliss Sturgulewski, Mr. Dick Randolph.

AUGUST 1, 1986.

Hon. TED STEVENS,
U.S. Senate, Hart Building, Washington D.C.

DEAR TED: The recent joint letter to you from the Republican Gubernatorial candidates perhaps has caused some confusion.

I want to point out that my concern relates to a specific issue: The apparent ambiguity of section 7 "c" regarding sovereignty. Further, my counsel advises me that Don Young's subsitute amendment, although possibly not his intention, raises further the ambiguities regarding sovereignty. I trust that you will insure that the final language of the bill will avoid this ambiguity.

Beyond this concern, I wholeheartedly favor the "1991 amendments" and urge their passage.

Sincerely,

ROBERT R. RICHARDS.

Senator MURKOWSKI. You may proceed.

If any more come in, I will just interrupt the proceedings to so indicate for the record.

Janie Leask, please proceed.

STATEMENT OF JANIE LEASK, PRESIDENT, ALASKA FEDERATION OF NATIVES, ACCOMPANIED BY DON MITCHELL, ATTORNEY, ALASKA FEDERATION OF NATIVES

Ms. LEASK. Thank you, Mr. Chairman. My name is Janie Leask, for the record. I am president of the Alaska Federation of Natives, and I would like to express our appreciation for the opportunity to testify this afternoon in support of S. 485. We do have testimony, which will be submitted for the record.

Senator **Murkowski**. It will be entered into the record.

Ms. **Leask**. When enacted into law, S. 485 will end the confusion, which has been engendered in the unfair treatment which ANCSA corporations have suffered as a result of the manner in which the Bureau of Land Management surveyed and conveyed submerged lands to ANCSA corporations prior to December 5, 1983.

Mr. Chairman, the enactment of H.R. 485 will moot the appeal in the *Wilderness Society* v. *Carruthers* and alleviate the necessity for the State of Alaska to file and ANCSA corporations to waste increasingly scarce shareholder money to defend needless lawsuits challenging ANCSA corporation title to lands conveyed in exchange for the extinguishment of aboriginal claims to most of the land in Alaska, lands which include lands within national parks and wildlife refuges established or expanded by Congress in 1980.

For the Alaska Native people who have been forced to spend millions of dollars over the past 15 years to defend their land settlement, the enactment of S. 485 is justice long overdue.

Consequently, Mr. Chairman, on behalf of AFN and its member corporations, I would respectfully request that S. 485 be reported by the Committee on Energy and Natural Resources and expeditiously enacted into law prior to the adjournment of the 99th Congress.

Because the so-called submerged land issue is unsually complex, I would like to ask now if Don Mitchell can briefly overview and review for you how the submerged lands issue came to be and why S. 485 in our opinion we feel is a fair, workable, comprehensive and long overdue solution to the controversy.

So at this time I would just like to ask Mr. Mitchell to give you a brief review.

[The prepared statement of Ms. Leask follows:]

TESTIMONY
OF
JANIE LEASK
PRESIDENT OF THE
ALASKA FEDERATION OF NATIVES
ON S. 485
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

AUGUST 4, 1986

Mr. Chairman, members of the subcommittee, my name is Janie Leask. I am president of the Alaska Federation of Natives (AFN). The AFN board of directors is composed of a representative of each of the thirteen regional corporations established pursuant to the Alaska Native Claims Settlement Act (ANCSA), a representative of each of the twelve Native regional nonprofit associations which provide health, housing, and related services to Alaska Natives in each geographic region described in section 7(a) of ANCSA, and twelve representatives of village corporations, and Indian Reorganization Act and traditional Native village councils. The totality of the over 60,000 Natives who reside in Alaska are shareholders of, or are represented by, AFN's member corporations and organizations. On behalf of AFN I would like to express our appreciation for the opportunity to testify this afternoon on S. 485.

When enacted into law, S. 485 will end the confusion which has been engendered, and the unfair treatment which ANCSA corporations have suffered, as a result of the manner in which the Bureau of Land Management (BLM) surveyed and conveyed submerged land to ANCSA corporations prior to December 5, 1983. Because the so-called "submerged land issue" is unusually complex, I would like to briefly review how the problem came to be and why S. 485 is a fair, workable, comprehensive, and long overdue solution to the controversy.

Section 6(m) of the Alaska Statehood Act applies the Submerged Lands Act in Alaska. Consequently, the moment the State of Alaska entered the federal union, by operation of law the new state was conveyed title to all "lands beneath navigable waters" which had not been previously withdrawn.

Unfortunately, whether a particular lake or river was or was not "navigable" at the time Alaska entered the union is a question of fact which can only be decided by a United States District Court. Until a federal court has determined that a particular lake or river is or is not navigable, neither BLM nor the State of Alaska knows conclusively whether the federal or the state government owns the bed. However, adjudicating the ownership of each of the tens of thousands of lakes and rivers in Alaska would be an outrageously expensive and unrealistically time consuming manner in which to manage the public lands. To avoid this result, over the past two hundred years BLM has developed a procedure for surveying and conveying public land which satisfactorily resolves the uncertainty as to which government holds title to the bed of which submerged lands.

At the time ANCSA was enacted in 1971, this procedure was set forth in the 1947 edition of the BLM Manual of Surveying Instructions, which, with one significant exception, continues to control the BLM survey and conveyance process in the present day. Sections 231 and 232 of the manual require BLM to "meander" all lakes and rivers which it determines administratively to be navigable plus lakes 25 acres or larger in size and rivers three chains or more wide. Section 226 of the manual then requires BLM to segregate land within meanderlines from the survey. When an entryman is conveyed land abutting or surrounding a lake or river which has been meandered, BLM satisfies the entryman's acreage entitlement by conveying him uplands outside the meanderlines. Land under and out to the median line of the meandered lake or river is conveyed to the entryman pursuant to the common law doctrine of riparian ownership and the land is not charged against the entryman's acreage entitlement.

In 1973 BLM published a new edition of the manual which requires the BLM to meander lakes 50 acres, rather than 25 acres, and larger in size.

Because the land within meanderlines is not charged against the entryman's acreage entitlement, if a court later determines that a lake or river overlying the land is navigable and that title to the land passed to the State at statehood, the entryman will not lose title to the number of acres of public land to which he is entitled to be conveyed. On the other hand, since land underlying the smaller lakes and narrower rivers that were not meandered is charged against the entryman's acreage entitlement, if a court later determines that a small lake or narrow river overlying this land is navigable, the determination does result in a reduction of the entryman's entitlement. However, since the likelihood of the larger lakes and rivers being navigable is large and the likelihood of the smaller lakes and rivers being nonnavigable is small, this system adequately protects the legitimate interests of both entrymen and the State in protecting their title to submerged lands.

Unfortunately, the Department of the Interior inexplicably and unlawfully refused to apply this time-tested and relatively simple procedure to the survey and conveyance of public lands to ANCSA corporations. Instead, on May 30, 1973, the Department promulgated 43 C.F.R. 2650.5-1(b).

This regulation requires the BLM to convey an ANCSA corporation title to the land beneath lakes and rivers within the corporation's selection area which it determines is nonnavigable, except that the corporation need not accept conveyance of land beneath a lake or river which is at least one-half section or more larger in size. Implementation of this regulation resulted in the conveyance to ANCSA corporations of fewer acres of public land above the mean high water line than the corporations would have been conveyed if submerged lands had been surveyed and conveyed pursuant to the procedure set forth in the manual.

It also reduced the total number of acres of public land which will be conveyed in exchange for the extinguishment of aboriginal title to lands not conveyed. If a federal court determines that a BLM determination that a particular lake or river overlying land conveyed to an ANCSA corporation is nonnavigable is incorrect, then the Department of the Interior did not own the land the BLM conveyed, and the corporation's acreage entitlement will have been reduced through no fault of its own.

The Department of the Interior justified its refusal to survey and convey submerged lands to ANCSA corporations in the manner set forth in the manual on the sole ground that the following sentence of section 13(a) of ANCSA mandates that result:

> No ground survey or monumentation will be required along meanderable water boundaries.

This tortured construction of ANCSA is without any rational basis of support. The sentence was inserted in section 13 by the ANCSA conference committee. The sentence alleviates the necessity of conducting expensive and time-consuming ground surveys of the myriad lakes and rivers located within areas withdrawn for selection by ANCSA corporations. It does not state that the BLM Division of Cadastral Survey is not required to follow its normal survey procedures when surveying lands selected by ANCSA corporations, including procedures which require lakes and rivers of appropriate size to be meandered using photogrammetric and other electronic means of survey. As the Bristol Bay Native Corporation wrote the Department of the Interior in 1978, if the Department of the Interior's interpretation of the intent of Congress embodied in 43 C.F.R. 2650.5-1(b) is correct:

> It would mean that the Congress, as a kind of afterthought in Conference, with no hearings, and no statement from any of the Natives whose rights would be affected, without a single word of explanation and in a section not dealing with acreage entitlement, by a single sentence dealing with the technology of conducting surveys, reduced, by a large but unknown amount, the acreage entitlements that were otherwise provided in the bill, in exchange for the extinguishment of the aboriginal claims of the Alaska Natives.

AFN and its member corporations protested 43 C.F.R. 2650.1-5(b) from almost the moment it was promulgated. However, rather than continuing the debate with the Department of the Interior as to whether the regulation was consistent with the intent of Congress, in 1978 AFN requested the Department to work with AFN to develop a statute resolving the dispute which both parties could request Congress to insert in the Alaska National Interest Lands Conservation Act (ANILCA) whose enactment was then under consideration.

During the course of the internal policy review which preceded those negotiations then Assistant Secretary for Land and Water Resources Guy Martin recommended to Secretary of the Interior Cecil Andrus that the most appropriate way to resolve the issue was simply to instruct BLM to convey public land to ANCSA corporations pursuant to the normal survey and conveyance procedures set forth in the BLM Manual of Surveying Instructions. However, Secretary Martin's suggestion was opposed by other persons within the Department who, unlike Secretary Martin, had no responsibility for the implementation of ANCSA or the survey and conveyance of the public lands. Although AFN agreed with Assistant Secretary Martin, it agreed to support an amendment to ANILCA that established a modified version of the survey and conveyance procedure set forth in the manual.

The amendment was adopted by the House of Representatives as section 918 of the version of ANILCA it passed in 1979. Had it been enacted into law, section 918 would have instructed BLM to survey and convey public land to ANCSA corporations in the manner set forth in the BLM Manual of Surveying Instructions, except that the size of lakes required to be meandered would have been raised from 50 acres to 160 acres.

Unfortunately, the Senate declined to adopt section 918. Instead, the Senate inserted what is now section 901 of ANILCA into its version of ANILCA which was ultimately enacted into law.

Section 901(a) establishes a five and seven year statute of limitiations on the State of Alaska's ability to challenge a BLM determination that a lake or river overlying land conveyed to an ANCSA corporation is nonnavigable. Although this approach was initially supported, and indeed suggested, by the State of Alaska, in November 1981 the State filed a lawsuit in the United States District Court in Anchorage which alleges that section 901 is unconstitutional because it violates the Equal Footing Doctrine. The lawsuit is still pending. Whether the State is right or wrong with respect to the merits of its claim, the lawsuit further confuses an already complex issue, guarantees more years of uncertainty, and has forced AFN's member corporations to spend significant sums of money to intervene in the litigation to protect the integrity of the ANCSA land entitlement.

Subsequent to the filing of the State's lawsuit, AFN again requested the Department of the Interior to review its decision that section 13(a) of ANCSA mandates that the procedure set forth in 43 C.F.R. 2650.1-5(b), rather than the procedure set forth in the BLM Manual of Surveying Instructions, must be used to survey and convey public land to ANCSA corporations. The Department granted the request and began the review, in which both BLM and the Office of the Solicitor participated, in the summer of 1983. As a result of the review, the Department concluded, as AFN and its member corporations had been arguing for the previous eleven years, that section 13(a) does not embody an intent of Congress that public lands be surveyed and conveyed to ANCSA corporations pursuant to a procedure different from the procedure set forth in the BLM Manual of Surveying Instructions. Consequently, on December 5, 1983, Assistant Secretary of the Interior Gary E. Carruthers published a notice in the Federal Register announcing the waiver of 43 C.F.R. 2650.1-5(b) and the Department's intent to meander lakes and rivers, and convey public lands to ANCSA corporations and the State of Alaska pursuant to the procedures set forth in the manual.

Because the December 5, 1983, decision eliminates any further need for the section 901(a) statute of limitations, AFN, the State of Alaska and the Department of the Interior jointly developed an amendment to section 901(a) which, when enacted into law, will repeal the statute of limitations and substitute an affirmation of Secretary Carruther's decision in its place. On February 20, 1985, Senator Murkowski introduced the amendment as S. 485.

At that time it was being developed, AFN fully briefed the Wilderness Society, the Sierra Club and other interested members of the Alaska Coalition about the new amendment. AFN emphasized that with the exception of returning the size of lakes to be meandered from 160 acres back to 50 acres, the proposed amendment was substantiaively identical to section 918 of the version of ANILCA passed by the House which the Alaska Coalition supported in 1979.

To no avail. On June 14, 1984, the Wilderness Society and the Sierra Club filed a lawsuit in the United States District Court in the District of Columbia which challenged the validity of Secretary Carruthers' decision on procedural and substantive grounds. The Wilderness Society v. Carruthers, No. 84-1823. At its core, the Wilderness Society's and the Sierra Club's objection to the Carruthers decision is that regardless of the merits of AFN's arguments or the injustice which AFN and its member corporations have spent thirteen years working to alleviate, Secretary Carruther's decision is unacceptable because it admittedly will result in the conveyance of additional acres of uplands to ANCSA corporations and out of federal ownership that would not have been conveyed pursuant to 43 C.F.R. 2650.1-5(b). AFN intervened as a party to the litigation. On January 30, 1986, United States District Court Judge John H. Pratt issued a memorandum opinion dismissing the Wilderness Society complaint. The plaintiffs' appeal of Judge Pratt's decision is now pending.

AFN and its member corporations deeply regret the Wilderness Society's and the Sierra Club's preciptitous action. The Wilderness Society and the Sierra Club are simply wrong on the merits.

But aside from the pall the lawsuit has cast over the submerged land conveyance process and the expense of litigation which ANCSA corporations can ill afford, there is a third, potentially more destructive, aspect of the Wilderness Society and Sierra Club lawsuit which transcends the merits of the plaintiffs' claims - the damage the lawsuit is doing to the long term relationship of trust and understanding which must excist between the Native community and the environmental community if the implementation of ANILCA is to be a success.

ANCSA corporations own 27 million acres of land within the boundaries of national parks and wildlife refuges. They own even more land immediately outside the boundaries of parks and refuges. Whether ANCSA corporations are conveyed additional acres of uplands within parks and refuges as a result of the decision being challenged in the lawsuit is irrevelant to protecting the plaintiffs' version of the national interest. Whether park and refuge values are protected in the years ahead is not dependent upon which landowner owns which particular tracts of land. The ANCSA acreage entitlement is simply too large. Rather, the protection of park and refuge values will only be assured if all landowners work cooperatively to minimize adverse affects on park and refuge lands.

But trust is an essential element of longterm cooperative management. And, regrettably, the Wilderness Society and Sierra Club lawsuit has seriously eroded the trust between the Native community and the environmental community which had heretofore been carefully nutured by both groups.

Mr. Chairman, the enactment of H.R. 485 will moot the appeal in The Wilderness Society v. Carruthers, and alleviate the necessity for the State of Alaska to file, and ANCSA corporations to waste increasingly scarce shareholder money to defend, needless lawsuits challenging ANCSA corporation title to lands conveyed in exchange for the extinquishment of aboriginal claims to most of the land in Alaska, including land within National Parks and National Wildlife Refuges established or expanded by Congress in 1980.

For the Alaska Native people who have been forced to spend millions of dollars over the past fifteen years to defend their land settlement, the enactment of S. 485 is justice long overdue.

Consequently, Mr. Chairman, on behalf of AFN and its member corporations, I would respectfully request that S. 485 be reported by the Committee on Energy and Natural Resources and expeditiously enacted into law prior to the adjournment of the 99th Congress.

Thank you.

Senator MURKOWSKI. If Mr. Mitchell can come up with anything that Mr. Katz did not already tell us, why, please proceed.

STATEMENT OF DON MITCHELL, ATTORNEY, ALASKA FEDERATION OF NATIVES

Mr. MITCHELL. Yes, Mr. Chairman. I think there are two or three considerations that I would like to put before the committee. Ms. Leask's testimony, her written statement, describes in some detail the complexity of the whole situation, and I will not repeat that here.

I have however had an opportunity to briefly review the Wilderness Society testimony that requests that this legislation not be enacted and that the whole issue be subjected to additional study, if that is possible to believe.

Senator MURKOWSKI. Oh, I believe it.

Mr. MITCHELL. And I would like to make several points about that.

The first is that this process has got to come to an end. As Ms. Leask has stated, literally millions of dollars out of the claims settlement have gone to people like myself and to consultants of every kind.

Senator MURKOWSKI. You should not admit that.

Mr. MITCHELL. Well, since I cannot hide it, I guess that is the best strategy.

Senator MURKOWSKI. We will hear from Lloyd Meeds here in a minute, too.

Mr. MEEDS. That has got to stop.

Senator MURKOWSKI. What was that, Lloyd?

Mr. MEEDS. In a minute.

Senator MURKOWSKI. OK. Excuse me, Don. I could not help but pick up on that voluntary remark.

Mr. MITCHELL. It is perfectly OK.

The expenditure of that money has got to stop. Too much of the Claims Act has gone to implement the act as opposed to benefiting the people that it was supposed to benefit to begin with.

The second thing is that this bill does not change the status quo. If this bill does not pass, the Secretary's December 1983 decision is still the law. Right at this very moment we finally, since 1983, on an operational level have got this thing straightened out. We have not gotten it straightened out on the legal level yet because that is obviously why we have asked for this bill to be enacted into law, but on an operational level in terms of what is happening today on the ground if the Wilderness Society approach is to be accepted, there will not be any change; in other words, nothing will be gained by not passing the bill.

Third, there is by any standard of measure nothing to be gained from further study. Mr. Meeds and I and everyone else at this table, Mr. Katz, we have been at this for three quarters of a decade. That is also the same with the representatives from the conservation and environmental groups that are testifying on the bill.

The House Interior Committee held—I guess it was last year—a long series of meetings from all the principals. We sat down; we went through every single one of the issues again for probably the third or fourth time and arrived at exactly the same result. So it is nothing new that will be gained by submitting this issue to further study.

The last insight I would like to leave the committee with in terms of what will happen in conservation system units if this bill is not enacted into law is that ironically it could well result in there being more lands transferred out of public ownership inside conservation system units than if this legislation is passed.

Now first of all with respect to the State of Alaska, because it has such a huge entitlement, whether this bill passes or does not pass will not result in the State of Alaska getting one more acre or one less acre of land within conservation system units.

It has selected what it has selected and either it gets the land that it has selected because it selected it—in which case it is charged against its acreage entitlement—or it gets the land because title actually passed under the Submerged Lands Act in 1959. But there is no effect on the public ownership of lands inside conservation system units with respect to the State of Alaska.

With respect to Native corporations, it is true that if lands are given to Native corporations under navigable waters within parks and refuges that are not charged against the acreage entitlement, that there will be additional selections that are made in the uplands that will be conveyed in settlement of Native claims.

That is true. But what is going to happen in my judgment is this: If this bill does not pass, Mr. Katz and the State of Alaska as they have already done once will eventually have to start filing hundreds of lawsuits against Native corporations, particularly village corporations, inside these parks and refuges.

The money is not there to defend those lawsuits. What is going to happen is that village corporations are going to say fine, we give up. We cannot pay Don Mitchell to go out and spend $50,000 to defend our title. We give up, State of Alaska. You win, the land passed to you in 1959 at statehood, and will then turn right around to the Bureau of Land Management and say since the State took away that land you gave us, we are entitled to additional upland selections because we are entitled to our full acreage entitlement.

Now ironically if this bill passes, there is substantial acreage that will not be subjected to that process that will be charged to the Native entitlement under navigable waters inside these units that will not result in additional selections of uplands in the refuges and parks. And I am frankly intellectually perplexed, particularly since the Wilderness Society and the Sierra Club have taken the position that their major policy concern is the conveyance of additional acres of public lands out of public ownership in parks and refuges, how they possibly could believe that in the end result, this is not in the national interest in everyone's interest.

And with that statement, I will conclude my testimony, Mr. Chairman.

Senator **Murkowski**. I will just ask a question while it comes to mind.

Have you had an opportunity to communicate your contention with some of the environmental groups?

Mr. **Mitchell**. Mr. Chairman, as I mentioned earlier, in an effort to resolve this by consensus the staff of the House Interior Committee held a series of three or four meetings that we all flew back to Washington, DC, and spent hours in terms of the people that actually understand this issue, discussing this, reviewing different options, trying to agree on the acreage. And during the course of those discussions, precisely the argument that I just articulated for you here on the record was discussed at length. And I never got a straight answer or an intellectually defensible answer, in my judgment anyway, from the other parties that were involved.

Senator **Murkowski**. Our next witness is Mr. Nelson Angapak, who is accompanied by Mr. Lloyd Meeds, the Honorable Lloyd Meeds.

You may proceed.

STATEMENT OF NELSON ANGAPAK, PRESIDENT, CALISTA CORP., ACCOMPANIED BY HON. LLOYD MEEDS, ATTORNEY, CALISTA CORP.

Mr. **Angapak**. Thank you very much, Mr. Chairman. For the record, my name is Nelson Angapak. I am president of Calista Corp., a Native corporation that was formed pursuant to the terms of ANCSA.

At the outset, Mr. Chairman, I do have a prepared statement and request that it be included in the record.

Senator **Murkowski**. It will be entered into the record.

Mr. **Angapak**. With that, Mr. Chairman, please allow me to express my thanks for being allowed to testify before this subcommittee. And I would also like to thank our own two Senators from Alaska, Senator Murkowski and Senator Stevens, for the sponsorship of the Senate bill, S. 485.

I will not reiterate what was stated by the previous people, but there is one thing that I would like to key in on. We have 56 villages in the region, 10 of which merged into the Calista Corp., leaving us with 46 village corporations in effect.

Many of the villages within the region are faced with the possibility of a lawsuit that could be filed against them if Senate bill 485 is not enacted into law. And I might add that at the time of the consideration of the extension of the statute of limitations, we seriously considered opposing that extension. However, after consideration, we felt that it was in the best interests of Calista as well as the villages within our region to go for a 1-year extension and in the meantime try and find ways and means of resolving it. We feel very strongly that Senate bill 485 is a way to do it.

I might add that Mr. Mitchell and Mr. Katz did not mention the fact that we have been trying to resolve the submerged lands issue since 1974, which is 12 years of work, and 12 years later something like $100,000 poorer we are beginning to see a light at the end of the tunnel.

So with that, Mr. Chairman, I would like to say that we are very strongly in support of Senate bill 485 and as quickly as it can become law that would be beneficial to all the parties that do have standing.

Thank you.

[The prepared statement of Mr. Angapak follows:]

TESTIMONY OF NELSON ANGAPAK,
PRESIDENT OF CALISTA CORPORATION
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS
RESERVED WATER AND RESOURCE CONSERVATION OF
THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

AUGUST 4, 1986

Mr. Chairman, my name is Nelson Angapak. I am President of Calista Corporation, a native regional corporation created under the Alaskan Native Lands Claims Settlement Act of 1971.

At the outset, please allow me to express my thanks for being invited to testify before this Subcommittee on the matter of submerged lands. This is an issue of utmost importance to Calista Corporation and to the 56 native villages located in the Calista region, which encompasses roughly hte same acreage as the State of Washington. Calista's million plus acres represents about a fifth of the land holdings of the Calista region. (See exhibit 1.)

Also, Mr. Chairman, allow me to take this opportunity to thank our own Senators, Senator Murkowski and Senator Stevens. Senator Murkowski's sponsorship for himself and Mr. Stevens of S.485 is a critical step in the long path Alaskan Natives have traveled to achieve resolution of the submerged lands issue.

Calista is the second largest Alaskan Native regional corporation, both in terms of geography and native population. All of the Calista region villages are located along coastal or in-land water bodies -- all of our village corporations have selected at least one township which is covered by more than 25%

water. Indeed, the Calista Corporation and the village corporations within the Calista region are by far the most affected Native corporations in the entire State of Alaska by the submerged lands issue.

For this reason, I am certain you can understand the importance of this issue to us and the gravity with which we approach it.

I do not intend to dwell at length on the legal and technical aspects of the submerged lands issue. Rather, I would like to recite some of the history of the efforts of Alaskan Natives generally and the Calista regional corporation in particular, to resolve this issue.

A brief discussion of the background and status of the matter, is, however, necessary to put this in proper context.

In 1971, the Alaskan Native Claims Settlement Act (ANCSA) was passed. Under this legislation, Alaskan Native corporations were to receive title to approximately 44 million acres of public lands. But the Native corporations were charged for all conveyed lands. As a result, a significant percentage of land entitlement was charged against the native corporations despite the fact that the lands were under water. This decision was absolutely contrary to the Departmental policy and the policy being implemented in all of the lower 48 states. In those states and under the Departmental policy, the manual for survey was, and is followed. The Manual of Instructions for Survey of Public Lands of the United States (1947) required that bodies of water, as well as lakes, equal to or larger than 25 acres, and streams and rivers equal or wider than 3 chains, were to be excluded from the public lands and such acreage not charged against the entitlement of the land owner. The Manual was revised in 1973 to change the size of the lakes from 25 acres to 50 acres. This is the procedure followed today in all other states but Alaska.

Because the 1947 Manual for Survey was in effect at the time of the passage of the Alaska Native Claims Settlement Act (ANCSA), Native corporations should have been entitled to exclude from lands chargeable against their entitlement all lakes of 25 acres or more and all streams and rivers equal or wider than 198 feet. Despite this fact, Alaskan Natives are now supporting Senator Murkowski's legislation, S. 485, which would implement the Manual of Instruction for 1973. This constitutes a compromise on the part of Alaskan Natives of approximately one-half of the total entitlement under the Manual for Survey in operation at the time of the passage of the Alaskan Native Claims Settlement Act (ANCSA). This action constitutes a very substantial compromise on the part of Alaskan Natives in an effort to achieve accommodation.

Please allow me to recite some of the history of our efforts to resolve this matter:

- At the time of passage of the Alaskan Native Claims Settlement Act (ANCSA) in 1971, Alaskan Natives generally and Calista Corporation natives in particular, felt something should be done to rectify the inequity. While law suits were discussed, a decision was finally made to attempt a legislative resolution. That first occurred in consideration of the Alaskan Native

National Interest Lands Conservation Act, (ANILCA) in 1978. A resolution similar to the Manual for Survey in 1973 was incorporated in a House bill, but Senate language was finally adopted which contained a different resolution.

- Alaskan Natives attempted to work with the resolution contained in the final Alaskan National Interest Lands Conservation Act (ANILCA), but in 1981 the sportsmen and the State of Alaska filed law suits challenging the constitutionality of the proposed submerged lands issue contained in Section 901 of ANILCA We have been litigating that issue since 1981 in the District Court for Alaska.

- Alaskan Natives joined with the State and the Bureau of Land Management in the adoption of a new policy by the BLM which would incorporate the Manual of Instructions for Survey of Public Lands of the United States (1973).

- On June 14, 1984, the Wilderness Society and Sierra Club filed suit in U.S. District Court for the District of Columbia challenging the validity of that action. Calista and other native corporation intervened in that action which was later dismissed by the U.S. District Court for the District of Columbia. Despite this, the Wilderness Society and the Sierra Club have appealed that dismissal and Calista and other native corporations are required to participate in that appeal.

- Calista and other native corporations have joined in discussions under the auspices of the staff of the House Committee on Interior and Insular Affairs where we have made several suggestions which we consider to be constructive. We have discussed these initiatives with House Committee staff and with environmentalist, but have received no encouragement.

The above constitutes a very brief resitation of the efforts of Calista Corporation extending over more than 15 years. In that period of time, countless hours have been spent by Calista officers, staff, and legal counsel.

When testifying recently before the Committee on Interior and Insular Affairs of the U.S. House of Representatives regarding H.R. 4162 (legislation extending the non-alienability of native corporation stock) I pointed out that Subsection(b) of the Alaskan Native Claims Settlement Act (ANILCA) provides in part, "the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of natives, without litigation . . ." [emphasis added]

"I continued on, the only "certainty" with regard to matters affecting Alaska Native Claims Settlement Act is that it is certain that Natives have had to, and are likely to continue to, litigate to obtain a favorable interpretation of most of the provisions of the ANCSA.

This is a perfect example of that admonition. Here we are 16 years later and $100,000 poorer, discussing what should have been a relatively simple matter to resolve equitably in the Native's favor some time ago.

For this reason, we are especially appreciative of Senator Murkowski and the Members of this Committee for helping to move this process along with this legislation and hearings.

Despite our strong support for this legislation, there is one matter which should be resolved before it is reported. From the outset of discussions between the State Natives and BLM it was agreed that adoption of the BLM Manual for survey would operate "ab initio."

That is to say that for any approved plat of survey upon which conveyance, or interim conveyance, was issued to the State or Native Corporation prior to December 5, 1983, [the date upon which the Secretary of Interior adopted the BLM Manual of Surveying Instructions (1973.)] and meanderable water bodies were not segregated from the survey but were included in the calculation of acreage to be charged against the State or Native land entitlement, the chargeable acreage is to be recalculated to conform to the principles contained in (BLM) Manual of Surveying Instructions, (1973).

That understanding and agreement is carried into effect for the State of Alaska by the memorandum of agreement between the U.S. Department of Interior and the State of Alaska incorporated in S. 485. Unfortunately, there is no such memorandum between the Department of Interior and Alaskan Natives, nor is there operative language in the statue to carry out the basic understanding and agreement. One of the reasons for the oversight may well have been the failure to include the Alaskan Native in the agreement for the State because the State was to repay for any recalculation, the Alaskan Natives were not.

Without such retroactive effect, this legislation is almost totally ineffective in resolving the submerged lands issue for Alaskan Natives. Approximately 90% of the lands due to the Native villages have been conveyed either by interim conveyance or conveyance. If these lands are not subject to recalculation,

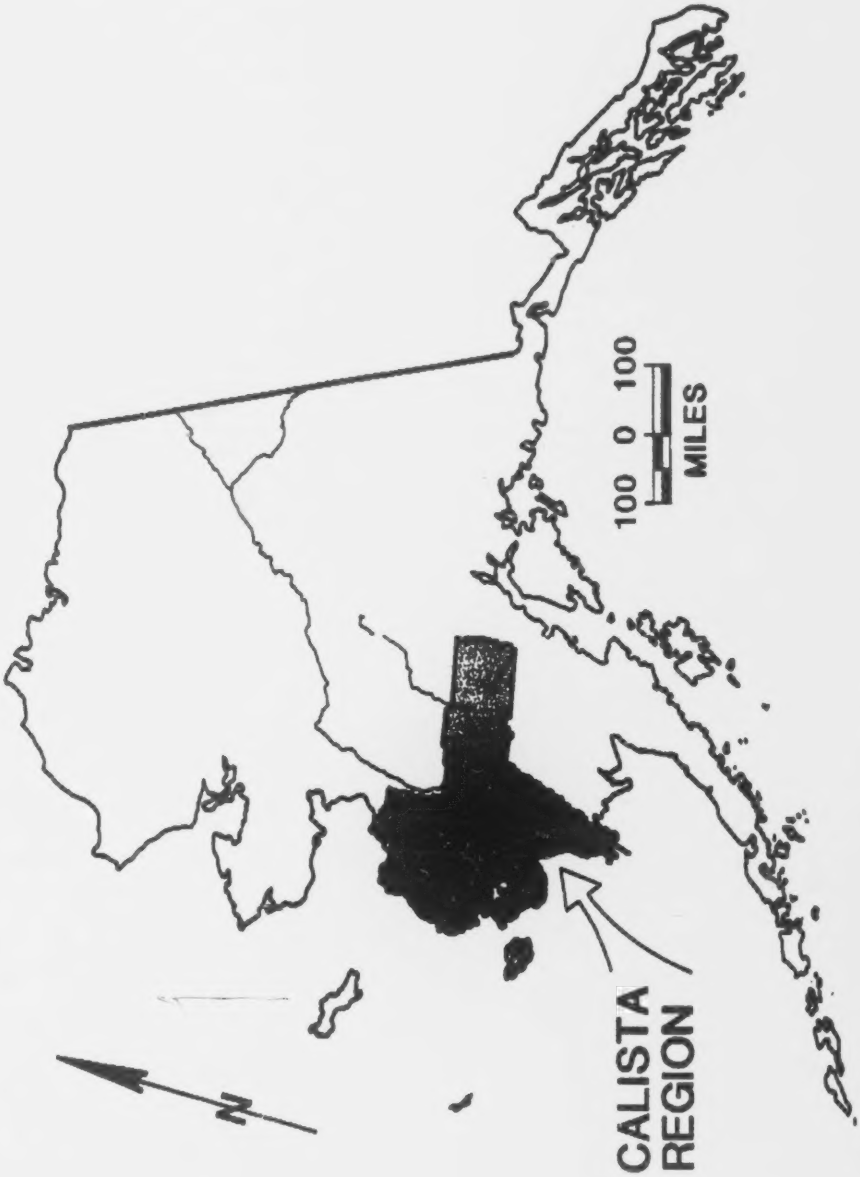
S. 485 is a hollow shell.

I am certain this is an oversight. I know of no one who would deny the original understanding and agreement. For this reason, it will be a simple matter to remedy the fault. Such a remedying change should be made before the legislation emerges from this Committee. We will be happy to work with staff to effectuate this addition.

Mr. Chairman, I appeared before your Committee on January 30, 1986, to support a simple one-year extension of the statue of limitations contained in Section 901 ANILCA. That extension was to give this body and the House of Representatives an opportunity to pass legislation such as S. 485. That year's extension is now more than half expended. We respectfully urge the Members of this Committee to act expeditiously to provide a just resolution of this serious problem in the time remaining.

AUG 01 '86 11:59 CALISTA CORP ANCH (907) 272-5060 P.2

EXHIBIT 1


100 0 100
MILES
CALISTA
REGION
N

TESTIMONY OF NELSON ANGAPAK
PRESIDENT, CALISTA CORPORATION
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER & RESOURCES CONSERVATION
U.S. SENATE
REGARDING S. 2065

Mr. Chairman and Members of the Committee, my name is Nelson Angapak. I am President of Calista Corporation, an Alaskan Native regional corporation created under the Alaska Native Claims Settlement Act of 1971. Calista is the second largest Alaska Native regional corporation, both in terms of geography and Native population.

Mr. Chairman, at the outset, please allow me to express my personal gratitude to you for having this hearing. This is a crucial part of the legislative process which we trust will lead to passage of this proposal. Thank you and Senator Stevens for sponsoring S. 2065. We look forward to working with you and other Members of this Committee to secure its passage.

Mr. Chairman and Members of the Committee, in order to understand the significance of the legislation presently pending, it is essential to have some understanding of the basic law which we seek to amend. At the risk of boring those of you who have dealt with the Alaska Native Claims Settlement Act before, but in hopes of enlightening those of you who have not had that opportunity, please allow me to examine a bit of the background.

The Alaska Native Claims Settlement Act ("ANCSA"), P.L. 92-203, was enacted in 1971. The purpose of that Act was to effect a "fair and just settlement of all claims of Natives and Native groups of Alaska based on aboriginal land claims; . . ." There were several schools of thought with regard to this legislation at that time. Generally speaking, one group desired to effect the compensation for the aboriginal claims, as had been done with the American Indians in the lower 48 states, i.e., by creating a reservation system and paying compensation for the aboriginal claims; another group desired to simply set aside a small area of land for each Native village and compensate the Natives for their aboriginal claims by the payment of fairly substantial sums of money into trust accounts to be managed by New York investment firms; and finally, a third group (including the Alaska Natives themselves) wanted to avoid the old system of reservations, as well as the paternalism encompassed in the investment of their compensation and its management by others. This group opted for a new approach in which the Alaska Natives would control their own destiny by controlling the land and the monetary compensation given in return for the aboriginal claims.

A system unique to Alaska Natives -- the corporate system -- was chosen as the method of controlling the land and the compensation received. Each Alaska Native village of a certain size was given the surface ownership of certain lands upon which the village was located and surrounding the village. The State of Alaska was divided into 12 regions which generally preserved ethnic distinctions. Corporations were created within each of these regions. These corporations were given the ownership of the sub-surface estate in the lands held by the villages, as well as additional surface and sub-surface estate in other lands. Each Native (as defined in the Act) in existence at the passage of the Act was entitled to shared in both his village corporation and the regional corporation in which the village was located. (Some limited exceptions and distinctions were created.)

Monetary compensation for the extinguishment of aboriginal title was divided among the Native regions and villages, primarily on the basis of population.

Stock in both village and regional corporations was to remain inalienable for 20 years after the enactment of ANCSA. At the time ANCSA was enacted, Congress thought that 20 years would be sufficient time for Alaska Natives to turn the village and regional corporations into viable economic entities. This belief was based on certain assumptions, set forth in declaration of policy contained in the Act itself. That declaration of purpose stated in part (b) "the settlement should be accomplished rapidly, with certainty in conformity with real economic and social needs of Natives without litigation, with maximum participation by Natives in decisions affecting their rights and property, . . . " (Emphasis added).

Many have testified to what the Members of this Committee already know. The settlement has not been accomplished "rapidly, with certainty . . . without litigation." Today, only approximately 80% of lands selected by village corporations in our region has in fact been conveyed by interim conveyance. The promise and high hopes created by ANCSA have not been achieved in the time frame originally envisioned by sponsors of the legislation.

The only "certainty" regarding matters affecting the Alaska Natives Claims Settlement Act is that it is certain that Natives have had to, and are likely to continue to, litigate to obtain favorable interpretations of most of the provisions of the ANCSA. Rather than interpret that law favorably to Alaska Natives, as Congress intended and everyone expected, most of the bureaus, agencies and commissions have interpreted provisions of the ANCSA against the Alaska Natives. By conservative estimate, funds spent for litigation as of the present time by Alaska Natives in attempting to realize the beneficial provisions of the Alaska Native Claims Settlement Act have totaled in tens of millions.

Delay, uncertainty, and unexpected litigation created some of the problems with implementing ANCSA. Another implementation problem was related to a different factor -- the reverence of the

Alaska Natives for the land. Few in Congress recognized the full extent of the great affinity the Alaska Natives have with their land, and few recognized that this affinity would be the same 20 years after the passage of ANCSA as it was 20 years before the passage of that Act.

In many ways, the creation of the corporate structure as the "new" solution to the problem of Native rights and claims was an attempt to use a non-Native mechanism for solving a Native problem. What should have been anticipated (but was not) was that imposing such a solution would create some problems wherein the two concepts were not a perfect fit. The primary area would be in the non-Native concept of stock and its changeability and in the Native reverence for land. Control of the stock meant control of the corporation's assets -- primarily its land. To the Native, land is not an asset to be sold and traded; it is the very foundation of his existence, his way of life. The premise of ANCSA was a recognition and preservation of that way of life. It would be the height of irony if the good intentions of the creators of the corporation solution would now be converted into the very vehicle that is used to take the land away from Native corporations.

Since the enactment of ANCSA, some of the Native corporations have done very well. Others have not done nearly as well, and still others have done poorly. Uncertainty, delay and litigation have resulted in many of the Native corporations not being able to function as yet on a straight economic basis in the corporate world. Because of the affinity of Alaska Natives for the land, some Native corporations will never wish to function totally in the economic corporate world. For that reason, the single most important provision in the proposed legislation is that provision which automatically extends the restrictions on alienation of stock by Native shareholders, but which would allow stock to become alienable if the shareholders vote to remove the restriction.

The intent of ANCSA was to assure Native Alaskans reasonable control over their future. Permitting Native shareholders to decide if and when their stock will be alienated is certainly in keeping with the intent and the spirit of ANCSA.

This provision is crafted in a way that is serves the best interest of all Alaska Natives and all others. It permits the shareholders of corporations who wish to function totally in the economic corporate world to do so by a vote of their shareholders. Yet it allows those who do not wish to depart radically from their rural, often subsistence-based traditions to retain the control of their corporations and, hence, control of their land and culture. Calista Corporation strongly supports this provision.

Some have suggested the extension of the provision against alienation should not be automatic. Rather, they suggest, the stock should become alienable in 1991 in the absence of a vote by the shareholders to the contrary. Others make a distinction between village and regional corporations. They would allow an automatic extension against alienation for village corporations but require an affirmative vote by regional corporations.

Mr. Chairman, these distinctions are counterproductive.

First, the overwhelming majority of shareholders -- regional and village do not wish their stock to be alienable. In regions such as my own, most of the regional corporation stockholders are enrolled in villages within the region. As such they are also village shareholders. Requiring them to vote affirmatively for something which all agree they prefer is to require expensive, time consuming and unnecessary elections. Rather the burden should be on those who would change the status quo.

The prime rationale for making the stock inalienable in the first instance was to allow the Natives to manage their own affairs and protect their lands. That rationale has not changed, nor is there a difference between regional and village corporations in this regard. To protect the village corporation lands but not the regional corporation lands is to protect less than half. The regional corporations hold the subsurface estate to all village lands. Anything which subjects the regional corporations to outside control jeopardizes the village lands as well as the regional lands.

Indeed, Mr. Chairman, the regional corporations are in even greater jeopardy from hostile takeovers than are a vast majority of the village corporations. The subsurface estate is where most of the resources are located. Resources will be the primary goal of takeover artists. If anything, the regional corporations should be afforded even more protection against hostile takeover than the village corporations.

It is not my intention to dwell on all of the provisions of the bill, but please allow me to discuss with a little more specificity a few of them:

* We in Calista are strongly supportive of the provisions that add Natives born after December 18, 1971, as shareholders. Under the present provisions of ANCSA, two classes of Native citizens have been created: one class with stock and one without. The purpose of ANCSA was to compensate for the loss of aboriginal rights. All descendants of the original Alaska Natives who establish those rights should be entitled to share the compensation for the taking of the rights. So long as Alaska Native blood courses through the veins of descendants, those descendants should share in the award.

* Some contend that provisions of the bill which entitle Natives born after 1971 to stock in the same proportion as those born before, cause an unacceptable dilution of existing shares. We recognize the bill as written causes

dilution. Whether that is unacceptable however, should be left to the Native people themselves. We do not contend that proposals such as intra-family gifts and others lack merit. But they should be options rather than mandated by the legislation. We are prepared to consider proposals on this section but let us not lose sight of the basic thrust which is to prevent two classes of Alaska Natives.

> * We agree with the provisions allowing dissenters rights. But we also agree that those rights can be restricted. Alaska Natives corporations are not corporations in the strict economic, legal and business sense. As they have evolved, they are essentially Native American organizations which have different values and priorities than the strictly monetary, legal and business corporations. A handful of dissenters should not be allowed to frustrate those purposes which, to many stockholders, are more important than the profit-making potential of the corporation.

* We support the provisions which preserve the legal status quo on the sovereignty issue.

Some say the legislation as written is not "sovereignty neutral." We do not agree but we do not oppose the addition of language which butresses the "sovereignty neutral" character of the bill. What we do oppose is the addition of any language which tips the scales against the status quo. Questions of governmental powers among Native Americans is an issue that affects all Native Americans -- those in the lower 49 states as well as Alaska Natives. In contrast, S. 2065 is a bill that affects only Alaska Natives. The issue of sovereignty should be resolved in a nationwide context rather than the narrow confines of the future of Alaska Native regional corporations.

You may wonder why we are before you today urging passage of legislation which deals with 1991. Why, you may ask, do we need to consider this issue now? Perhaps I can answer your inquiry by relating to my own experience. I have been involved with Alaska Natives for more than twenty years. I have been active in Calista Corporation since its inception in 1972. I travel our region constantly. But even I have only been to 45 of our 56 villages. Time, distance, and communication among native people in our region -- and many other parts of Alaska -- defy understanding by non Alaskans.

Mr. Chairman, this proposal must not be viewed only through the flinty eyes of corporate legal council. The corporate frame has been used to provide a unique response to a uniquely Alaska problem -- within these corporate frames reside the hearts and souls of Alaska Natives. Form should not be allowed to prevail over substance. The essence of this proposal is that it assures the protection of the land for those who wish it; yet it allows those who chose a different course to follow it. This proposal allows those choices without doing violence to Alaska or federal law. We urge its adoption.

Senator Murkowski. Thank you.
Mr. Meeds.

STATEMENT OF HON. LLOYD MEEDS, ATTORNEY, CALISTA CORP.

Mr. Meeds. Thank you very much, Mr. Chairman. I would just like to emphasize two of the points in Mr. Angapak's testimony. I am Lloyd Meeds, Washington, DC, counsel for the Calista Corp.

Don Mitchell is exactly right. He and I and John Katz, too, have been working on this issue since longer than we really want to know about. And I think it is excellent that the Senator chose to have these two hearings back to back because it allowed Alaska people to come down to testify on both issues at the expense of one airplane trip. And I thought it was an excellent idea.

It also points up an irony, however. And that irony is that the 1991 legislation would amend the Alaska Native Claims Settlement Act which provides in its declaration of purpose that the legislation should be passed and the settlement "should be accomplished rapidly with certainty in conformity with the real economic and social needs of Natives without litigation."

Mr. Mitchell is exactly right. While I am one of the beneficiaries of some of that litigation and legislative effort, I would gladly forego that to see this act implemented in such a way. The issue before us, Senator, is perhaps one of the best examples of the litigation Alaska Native corporations have been forced to be involved in, which they really should not have to have been involved in at all.

A relatively simple matter which the Senator pointed out when he opened the hearings that the BLM interpreted the law contrary to the way it was doing in every other State against the State of Alaska, against the Alaska Natives, 14 years ago, 15 years ago, the Alaska Natives and the State of Alaska have been involved in efforts to get that changed ever since.

It has cost the Calista Corp. well in excess of $100,000, probably closer to $200,000. They were involved in two ongoing lawsuits right now, one in the district court of Alaska and one in the district court in Washington, DC. The one here in Washington, DC, was, I would say and I think that neither Mr. Katz nor Mr. Mitchell would disagree with me, won overwhelmingly by the State and by the Natives. Despite that, it is now on appeal and they are having to go further with that litigation.

It is a perfect example of precisely why the 1991 legislation needs to be passed, because they have not been dealt with in a way in which they could husband their funds, husband their activities, to carry out the legitimate purposes for which they were originally set up.

The passage of this legislation is critical to the people in the Calista region, and I commend Senator Murkowski for his attention to it and hope that the 1-year extension in the statute of limitations, which Mr. Angapak testified for recently before this committee and which is now almost half gone—in fact, better than half gone—will be used to pass this badly needed legislation.

Thank you, Senator.

Senator Murkowski. Thank you very much, Mr. Meeds.

I have one question, and I would ask it of Mr. Angapak and Ms. Leask. With regard to the contention of approximately 270,000 acres, being that which would apply to the regional corporations, is that a figure that you agree or disagree with?

Mr. ANGAPAK. Mr. Chairman, the amount of acreage that Mr. Katz quoted, based on the calculations that we made, is substantially less than what we feel the true acreage would be.

Senator MURKOWSKI. Well, is the 270,000 acres something that you feel is compatible with what you anticipate would be the Native corporation's land share, or not? Or do you have an opinion?

Mr. ANGAPAK. Mr. Chairman, in our region alone the amount of bodies of water that are within the areas that were selected by the villages, when we preliminarily did that, it came out to approximately 350,000 or in that neighborhood. You have to keep in mind however that our region has probably the largest number of lakes, 50 acres or more, that are deemed nonnavigable.

One other thing you have to keep in mind is that from our standpoint to compromise to the standards of BLM Manual of Survey of 1973, rather than going with BLM Manual of Survey of 1947, which was in effect at the time of the passage of the act, was a substantial compromise on our part because then you would be talking a larger number of acreage.

Thank you.

Senator MURKOWSKI. Ms. Leask, the figures quoted by Mr. Katz, were, I think, 460,000 acres to the State and 270,000 acres to the regional corporations. I am wondering if you would care to comment on whether that, in your opinion, is reasonably accurate or not.

Ms. LEASK. We feel that it is reasonably accurate.

Senator MURKOWSKI. Thank you. I have no further questions of this panel. I wish you all a good day.

I would call on panel 11.

Mr. KATZ. Mr. Chairman?

Senator MURKOWSKI. Mr. Katz.

Mr. KATZ. I would like to clarify for the record so that I do not mislead the committee what those figures apply to. Those numbers are the direct outgrowth of Secretary Watt's decision in 1983 and represent the prospective application of his policy throughout the remainder of the State and Native selection process.

The figures would be larger if the policy is applied retroactively from the very beginning of the Statehood Act and the very beginning of the Settlement Act. And we can supply those numbers for the record.

Senator MURKOWSKI. We would appreciate that, Mr. Katz. Thank you for that clarification.

[The information referred to follows:]

BILL SHEFFIELD
GOVERNOR

State of Alaska
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

August 13, 1986

The Honorable Frank Murkowski
United States Senate
709 Hart Building
Washington, D.C. 20510

Dear Senator:

At the Public Lands Subcommittee hearing on S.485, the submerged lands bill, you requested additional information concerning acreage that would be conveyed into state or Native ownership as the result of using the standard rules of survey for determining acreage chargeability.

Initially, it should be emphasized that this acreage is not in addition to the state and Native acreage entitlements under the Statehood Act and the Alaska Native Claims Settlement Act (ANCSA). When using the BLM survey manual, lands underlying lakes 50 acres or larger and rivers and streams 198 feet in width or wider are not charged against acreage entitlements. Therefore, the state and Native corporations will be able to select additional upland acres rather than to have submerged lands charged against their entitlements.

In my written testimony, I stated that approximately 460,000 acres of uplands would be conveyed to the state and 270,000 acres would be transferred into Native ownership as a result of the application of the BLM survey manual. These estimates were arrived at by the state in consultation with the BLM and the Natives, and are based on detailed analysis of eventual land ownership in the various physiographic regions of Alaska.

The figure for the state reflects the Memorandum of Understanding between the state and the Interior Department, which provides for application of the survey manual, and which contains an agreement that the state will pay for the costs of survey to meander waterbodies or to correct patents issued prior to 1983. The Department of Natural Resources estimates that 92,000 of the 460,000 acres represent uplands that would be conveyed to the state as a result of pre-1983 patents if the state decides to pay for the work involved. As I noted in my testimony, there are few state inholdings

HALL OF THE STATES — SUITE 518 — 444 NORTH CAPITOL STREET N.W. — (202) 624-5858

in conservation system units (CSU's), and any additional state conveyances resulting from application of the survey manual will not significantly affect these units.

The Department of Natural Resources estimates that approximately 100,000 of the 270,000 Native selected acres mentioned above fall within CSU's established by ANILCA. However, how much of this 100,000 acre figure would result in additional upland conveyances within CSU's is difficult to determine because the amount of valid overselections varies from corporation to corporation.

The bulk of these conveyances would be to village corporations in the Calista region. While the Yukon Delta National Wildlife Refuge encompasses a large portion of the acreage in the region, it should be noted that many villages chose to select land in what later became the wildlife refuge because the resource values there are primarily habitat and wildlife. Therefore, it is likely that any additional selected acreage would be managed by the village corporations in a manner compatible with the surrounding area.

In closing, I want to mention that the acreage totals for lands conveyed to Natives within CSU's and to the state prior to 1983 are best estimates and have not been reviewed by the BLM or the Natives. Nevertheless, we believe that these numbers are reasonably accurate since they are the product of the methodology utilized to compute overall meanderable waterbody totals. These figures could vary depending on actual survey and the results of the state's navigability test cases.

As indicated in my earlier testimony, we think that any negative impact is far out-weighed by the equity and other considerations described in that testimony.

Please let us know if we can provide any additional information.

Sincerely,

John W. Katz
Director of State/Federal
Relations and Special Counsel
to the Governor

cc: Tony Bevinetto
Mike Harvey

Mr. MEEDS. Mr. Chairman, if I might quickly add something in that respect. Mr. Katz is precisely correct. The retrospective application of this is absolutely essential for the Alaska Natives because almost 90 percent of the land to which the villages were entitled was either by interim conveyance or by patent conveyed prior to 1984 at the time of the adoption of the new BLM Manual of Survey.

So the bill is really an empty shell to the Native corporations if it does not apply retroactively, and we urge that that change be made. I know of no objection to it. It always was understood that it should.

Senator MURKOWSKI. Thank you, Mr. Meeds.

I will excuse the panel.

We are moving right along. We have been at it about 5 hours and 5 minutes. I am sure the court reporter is weary. Our only witness on panel 11 is Mr. William Reffalt, representing the National Wildlife Program director, representing the Wilderness Society, a previous witness, you have been bearing well with us and we appreciate that.

You may proceed, sir.

STATEMENT OF WILLIAM C. REFFALT, DIRECTOR, NATIONAL WILDLIFE REFUGE PROGRAMS, THE WILDERNESS SOCIETY

Mr. REFFALT. Thank you, Mr. Chairman. I have a statement, a fairly lengthy statement, that I will try to summarize for you.

The final determination of ownership of lands underlying nonnavigable bodies of water in Alaska has proven to be a very difficult issue. Because the issues have a tremendous amount of inherent complexity and uncertainty, most of the proposed solutions have often raised many new problems while leaving the uncertainties unchanged.

We still believe that the simple time extension granted by Congress last year remains today the preferred option for dealing with this issue in the immediate future. However, it is our belief that a congressionally directed study of the issues involved and the likely effects of the alternative solutions should accompany a 1-year time extension.

I have appended a brief outline, appendix A to my testimony, of the elements of such a study for your consideration. We recommend the Congressional Research Service coordinate and lead the study effort which should involve analyses of data supplied by the State, Native corporations, the Federal Government, major interest groups.

The Wilderness Society opposes passage of S. 485 because it would, in our opinion, needlessly give away interests in lands and resources of substantial value of all citizens of America and would diminish the protection and preservation of nationally significant resources within the conservation system units in Alaska.

The bulk of the remainder of my testimony is essentially a historical sketch of the background of the submerged lands issue, and I do not think there is any need for me to go into that. I will be glad to answer any questions you have.

Senator MURKOWSKI. I appreciate that, Mr. Reffalt.

I am curious how the Wilderness Society can justify a formula that is applicable for all the rest of the States and not for Alaska.

Mr. REFFALT. Senator, we viewed the differences emanating from the Statehood Act itself. Alaska was treated substantially differently than any other State in this country at the time of statehood.

First of all, it was given 104 million acres, which is the largest land grant given to any State.

Second, it was allowed to select those lands from anywhere in the State on vacant, unreserved, and unappropriated lands. No other State was given that kind of a settlement. All the other States were given certain sections within each township wherever they may rest and whatever resources happen to be upon them. In those cases, if there were nonnavigable bodies of water of substantial magnitude, there may have been some reason to meander those out.

But in the case of Alaska, where the minimum selection was even deemed to be 5,600 acres, plus or minus, it just does not seem to have a correlation.

Senator MURKOWSKI. Well, I cannot help but note, too, that there is more wilderness in the State of Alaska than all the rest of the States put together. So we must have done something right. How many acres do you believe are in dispute in the submerged lands issue?

Mr. REFFALT. We honestly do not know.

Senator MURKOWSKI. Do not know. Could you provide that for the record for us, please?

Mr. REFFALT. There is probably no way that we could do that. We could give you a set of statistics.

Senator MURKOWSKI. Well, you are asking that we delay this issue for another year. It has been 6 years now, and I would assume that you would know during that period of time what your point of dispute was, and that is why we would appreciate it for the record, if you would care to address it. Either you have a figure or you do not or you are going to get one or you are not. But to just leave it hang after 6 years, really does not seem to be responsible in the sense of your obligation or mine as a hearing officer who is to try and move things along to a resolve one way or the other.

Mr. REFFALT. Mr. Chairman, I would point out I have had a fairly lengthy involvement with this issue.

Senator MURKOWSKI. Well, in 6 years we all have.

Mr. REFFALT. And in that period of time, I have dealt with a variety of figures, in terms of how much land might be involved. That has ranged from as high as 10 million acres, which is I believe the statement that was made by Mr. Watt at the time that he announced his policy in 1983 that it could be as high as 10 million acres, and it ranges down to approximately the figures that you were given by Mr. Katz a few moments ago.

Somewhere in between those two figures is probably truth. The problem in coming up with a clear set of figures that represents an exactitude is that you have to deal, even in these surveys, with the term "navigability." And navigability can only be determined ultimately by the courts.

Until those are determined, to make a judgment based on a set of criteria estimating what navigability may include leaves you with a great deal of potential error. And it is in that area that we believe the current statistics are erroneous because it uses the State estimates of what is navigable, as opposed to somebody else's estimates.

Senator **Murkowski**. Well, somebody has got to throw something out there and you either agree or disagree. And it would appear that the figures are out there and you are not prepared or are unwilling to address what you feel is in contention. And all I can do is point that out for the record.

Mr. **Reffalt**. Well, that is one of the reasons that we so strongly support the CRS-directed study because I think if the members of the committee and the public were given a set of statistics that range with the different assumptions for navigability, for instance, and could have a better understanding of what goes with which set and what the actual impacts might be, there would probably be less contention on the issue.

Senator **Murkowski**. Well, let us get down to specific cases now. Mr. Mitchell has spent a good deal of time, along with other counsel, on this matter, and Mr. Meeds as well, and both are of the opinion that with or without legislation more uplands are going to be conveyed to the Natives. As a consequence, in other words, village corporations rather than go to court will basically concede disputed lands to the State and go to the Bureau of Land Management for their entitlement.

Now is that not contrary to the attitude and position of your organization?

Mr. **Reffalt**. Our organization of course is in litigation on this issue.

Senator **Murkowski**. I know. But specifically on this question, is that not going to expand the consideration as opposed to contract it?

Mr. **Reffalt**. I simply do not agree with the statement.

Senator **Murkowski**. You do not agree—well, what do you not agree with? You do not think that village corporations that have no means to continue to litigate would rather concede and just go to the BLM and ask for their entitlement? The BLM will have to give it to them.

Mr. **Reffalt**. One of the suggestions that we made during the period of time that we were trying to find avenues for resolving this issue was to have the Government protect the Native interest by following through and litigating for the Natives on BLM navigability determinations. And that was rejected by the Department of the Interior.

So there are ways to protect the Native interests. The Wilderness Society is totally, 100 percent, supportive of the Natives getting free title to the 44 million acres that were granted in its Settlement Act. And for the State to get free title to the 104.5 in the Statehood Act, that should be protected under any cases.

What we object to is what we believe to be a needless giveaway of additional Federal lands, Federal or State, to solve a problem that we believe can be solved in other ways. And we have offered these suggestions numerous times.

Senator **Murkowski**. Every other State got it except the State of Alaska. And this is a provision which declares that the State of

Alaska would receive the same treatment as any other State. And the opinion enunciated by counsel is one that I really do not think you can responsibly dismiss by suggesting that it is unlikely to occur or that the argument does not have validity.

I would appreciate it if you and/or any other representatives of the environmental community would address his argument specifically, and see indeed if you can shed some light for the benefit of our committee and my colleagues on whether it has merit. He contends it does and you contend that the argument is irrelevant. I guess that is your position.

Mr. REFFALT. I said I disagreed with the statement that the——

Senator MURKOWSKI. Well, when we disagree with something, usually—what else do you think they will do? You have suggested another alternative, but you did not counter on what you think the village corporation that does not have any money is going to do. Are they not just going to go to the BLM and say give me the entitlement?

Mr. REFFALT. I really do not think that I would recommend that any corporation that I was counseling do that.

Senator MURKOWSKI. What would you recommend that they do if they do not have any money for legal fees?

Mr. REFFALT. I would probably recommend that they come back to Congress.

Senator MURKOWSKI. Well, boy, that would take a while because we have been working on this for 6 years. And if you do not have any money, I do not know how long you can put your body in front of the doors of the Congress and expect an expeditious response.

Well if you are inclined to reflect on it, the record is open for 2 weeks, because I would certainly like to hear a counter to the contention of counsel.

One of the things that frustrates me—and obviously this appears to be a procedure of some of the environmental community—is just delay, delay, delay and eventually you will wear them down, and I think that is unfortunate.

Six years is quite a while in any man's game. And to just suggest that the responsible action is one more year's delay when we have an agreement by the Federal Government, we have an agreement by the State of Alaska, and we have an agreement by the Native community in support of this is irresponsible. Suddenly here is an environmental organization that just says no, one more year's delay. In all due respect, Mr. Reffalt, I do not buy it.

Mr. REFFALT. Mr. Chairman, I would point out, first of all, that the Bureau of Land Management implemented the Statehood Act for almost 25 years before the policy was changed. Somehow miraculously that was not a problem during those 25 years.

The passage of ANILCA in 1980 set a policy and a procedure for solving the problem that was agreed to by all the parties to that legislation, the same parties that you just mentioned. And it is our contention that if that provision, section 901, had been implemented as it was agreed to by all those parties, we would not be sitting here today.

Senator MURKOWSKI. With all due respect it has been 27 years since statehood. I do not think there is any other State that ever entered the Nation with as many restrictions, extended delays in the transfer of land conveyance and so forth than the State of Alaska, and as one Alaskan, I am fed up with it. And I think I speak for a lot of other Alaskans.

Thank you very much. I wish you a good day.

We are going to turn to a new bill, the third one, after we have a 5-minute break.

[Subsequent to the hearing, Mr. Reffalt submitted the following:]

THE WILDERNESS SOCIETY

FOUNDED IN 1935

August 7, 1986

Chairman, Public Lands,
Reserved Water & Resource
Conservation Subcommittee
Senate Energy & Natural
Resource Committee
Room SD-308
Washington, DC 20510

Dear Mr. Chairman:

During the Subcommittees' recent (8/4/86) hearing on S.485, I was asked to provide additional comments, statistics or analyses on several matters. I offer the following in fulfillment of the Chairmans' request and ask that it be included, along with my full written testimony, as part of the hearing record. Once again, I express the appreciation of The Wilderness Society for the opportunity to present our views on this legislation.

Alaska Statehood Matters: I was asked why the Society views Alaska's land grant as a unique grant and why we do not agree with the "equal treatment" argument regarding the practice of charging the state for the acreage of lands lying beneath non-navigable lakes and streams.

As pointed out in my testimony, we believe Alaska's statehood grant was both generous and unique. The grant of selection rights (a quantity grant) has been seldom used by Congress in providing

1901 PENNSYLVANIA AVENUE, N.W., WASHINGTON, D.C. 20006
(202) 828-6600

lands to the states upon their entry into the Union. The one notable exception, Nevada, provides some interesting insight regarding the perceived value of obtaining the privilege of selecting a specified quantity of land versus the long-held Congressional policy of making in-place land grants (i.e. sections 16 and 36 in each township, a practice began in 1848).

Nevada was originally granted in-place lands totalling 3.9 million acres. The state subsequently requested that Congress grant the privilege of selecting lands on a quantity basis (which permits the state to obtain the best quality of lands in the process) and agreed to reduce its statehood entitlements to 2 million acres (plus the 62,000 acres already patented to it). Thus, for the privilege of selecting, Nevada willingly "paid" nearly 1/2 of its original, in place, entitlement.

If Alaska had entered statehood using the land grant policies of the previous states, it would have received approximately 42,027,500 acres, more or less, as contained in Sections 16 and 36 (and two other designated sections in each township), regardless of where those lands were located, or the resources they contained. If Alaska had followed the precedent set by Nevada and subsequently requested a quantity grant, the acreage would have been reduced to about 21,000,000.

Instead, Alaska was granted selection rights -- at the outset -- of 104,500,000 acres and, Alaska was given 25 years (later increased to 35 years) to make its selections. In providing this unprecedented land grant, Congress required that the selections be made in blocks of no less than 5,760 acres, and specifically provided only for exterior boundary surveys and that patents would be issued on the basis of the exterior boundary surveys. These last two provisions effectively preclude the meandering process followed in the manual of survey and, therefore, constitute one major reason for the original DOI policy of "charging" for all submerged lands except those underlying navigable bodies of water.

In reviewing the issue of equal treatment related to statehood grants, the Congressionally established Public Land Law Review Commission (PLLRC), in 1970 (10 years after Alaska Statehood), stated (p. 244):

> "...public land grants to states have not been strictly unilateral bounties, but rather important elements of bilateral compacts. These varied widely according to the circumstances of the times, and Federal land grants were part of the package. In our view, equity does not demand adjustments in these sovereign contracts." (Emphasis Added)

The PLLRC report also stated (p. 244):

> "At the time of admission to the Union, each state in effect entered into a compact with the United States setting forth the terms of its admission, and we do not believe that they should be disturbed." (Emphasis Added.)

Acreage Matters: I was asked to provide our estimates of the magnitude of additional land conveyance that will occur if the policy adopted by Secretary Watt is implemented by S. 485. Although I strongly believe that it is not possible to provide a single set of estimates that would be completely accurate, I have, by research, found several previously constructed estimates and offer them as a means of showing the wide range of possibilities. Before proceeding, I would point out the two major factors affecting all estimates, 1) navigability and 2) whether the estimates apply to a) all remaining entitlements as of a certain date, or b) all entitlements.

In the case of navigability, the different approaches can create figures that vary by 1200 % (see, for example, Alaska DNR report of 9/20/84, with a low of 300,000 acres and a high of 3,590,000 acres). On the matter of which part of the entitlement the free grant of non-navigable submerged lands is to be applied, the variation would be substantial. The figures supplied by Mr. Katz are estimates based on granting the submerged lands free of charge only for the remaining entitlements after 1984. Since a great deal of land had been conveyed by that date, the acreages could more than double if the grants were applied to the original entitlements.

With these major influencing elements in mind, the uncertainty of any calculation should be apparent. Nonetheless, there have been a number of estimates rendered and I herein provide several that I could discover in a brief time:

1. Dec., 1977 - native selection increase ± 10-12 million ac.
   state selection increases ± 20-25 million ac.

   Source: DOI Memo, Assoc. Solicitors Energy and Resources and Conservation and Wildlife to Solicitor.

2. Aug., 1979- native selection increases ± 2-6 million ac.
state selection increase - not addressed.
Source: DOI Memo, Asst. Sec. FWP to Acting Legislative Counsel.

3. Aug., 1979- native selection increase ± 2-6 million ac.
state selection increase - not addressed.
Source: DOI Memo, Asst. Sec. LW to Cynthia Wilson

4. Aug., 1979- native selection increase ± 1,548,964
state selection increase - not addressed.
Source: DOI Memo, Asst. Sec. LW to Alaska Policy Group

5. Aug., 1979- native selection increase* - 1) ± 704,000 ac.
2) ± 838,000 ac.
3) ± 749,000 ac.

*All three estimates are based on excluding only lakes over 160 acres rather than the current proposal of excluding those over 50 acres. Thus, further upward adjustments would be required to conform these estimates to the current proposal.

state selection increase - not addressed.
Source: BLM Memo, Asst. to the State Director, ANCSA to BLM (311).

6. May, 1982- native selection increase 1) ± 698,000-749,000 ac.
2) ± 1,500,000 ac.
state selection increases ± 2,300,000 ac.
Source: BLM Memo, AK. State Director, BLM to Federal Co-Chairman, Alaska Land use Council.

7. Ca June, 1982- native selection increase 1) ± .6-1.1 mil. ac.*
2) ± 3-6 mil. ac.
state selection increase ± 3-5 mil. ac.

*Based on the 160 acre lake criterion, thus it would have to be increased to accommodate the 50 acre lake proposal.

Source: DOI Briefing Paper entitled - Alaskan Navigability Lawsuit and Acreage Chargeability.

8. Jan., 1984- native selection increase ± 1-2 million acres.
state selection increase ± 3-5 million acres.

Source: Telephone Conservation between DOI official and representative of The Wilderness Society regarding expected impacts of Secretary Watt's Nov., 1983 policy change announcement on chargeability of submerged lands.

9. Sept., 1984- native selection increase* 1) ± 120,000 ac.
2) ± 278,000 ac.
3) ± 1,390,000 ac.
state selection increase* 1) ± 180,000 ac.
2) ± 460,000 ac.
3) ± 2,200,000 ac.

*All acreages are based on applying the new chargeability policy to the remaining entitlements only as of that date. If applied retroactively, the estimates would increase substantially.

Source: Summary chart entitled - Estimated Acreage of Reparian Ownership Using Meandering Provisions of BLM Manual of Surveying Instructions. By the Alaska Department of Natural Resources, Div. of L&W.

10. Oct., 1984- Source: Letter from AK. State Office, BLM to State Div. of L&W. This letter affirms BLM's agreement with the estimates presented in document #9 above. However, this letter also acknowledges that the medium range of estimates is based upon an ALJ decision (#RLS-76-2) which resulted in "finding approximately 80 percent of meanderable lakes and rivers on State and Native corporation lands to be navigable." [Thus, if a later court decision modifies this yet informal judgement, the acreage changes could be substantial.]

Jeopardy to native corporations: The final matter that the Subcommittee Chairman requested further response for the record, concerns the possible jeopardy of native corporations losing entitlement under state navigability challenges. I indicated at the hearing that I did not believe this was a realistic possibility. The basis of my belief is derived from the existing provisions of Section 901 of ANILCA.

Subsections 901(a), (c) and (d), acting together, provide the certainty of ownership sought by the native corporations. Subsection (a) was intended to accomplish that certainty in a reasonable time. Subsection (c) provides for repayment of " . . . costs and attorney's fees, including costs and attorney's fees incurred on appeal." to insure that native corporations will be repaid in any legal action that does not remove the lands from their ownership. Subsection (d) provides the final element of protection, in that it requires that acreage entitlements be determined not to have been conveyed until the statute of limitations has run its full course, and a final judgement not subject to an appeal has been obtained. This provision allows the native corporation to use other provisions of Section 901 to replace the acreage that might be lost to appeals filed pursuant to Subsection 901(a).

The Wilderness Society, and others, believe that Section 901 provides an equitable solution to non-navigable submerged lands issues and should not be replaced or repealed. Further, we do not believe it is necessary or in the public interest to give away additional lands and resources in Alaska. We believe the State should receive its 104.5 million acres (plus lands beneath unreserved navigable waters) and the native corporations should receive their entitlement of 44 million acres. We do not believe those original compacts should be disturbed.

Thank you for providing this further opportunity to comment.

Sincerely yours,

William C. Reffalt

William C. Reffalt
Program Director
The Wilderness Society

Senator Murkowski. When we come back, we are going to see how many chairs we have and how many people we can line up. For the benefit of those who will be testifying, Mr. Peterson, U.S. Forest Service; Steve Silver, Washington counsel for Amselco Minerals; Mr. William Munday, assistant to the mayor, Angoon; Mr. Ivan Gamble, president, Kootznoowoo, Inc., Angoon; Mr. Sterling Bolima, Kootznoowoo, Angoon; Mr. John Morris, general manager, Haida Corp., Hydaburg; Mr. Ted Borbrige, chairman of the board, Shee Atika; Mr. Bob Loescher, senior vice president, Sealaska, and that is it.

[Recess.]

Senator Murkowski. We will proceed with the opening statement, and we will have the Chief of the Forest Service, Mr. Max Peterson.

This is the third bill. I am going to make a short statement because otherwise the people that wrote it would feel bad. [Laughter.]

It is shorter than the last two. They keep getting shorter all the time.

The third bill of the subcommittee hearing, S. 1330, is a bill to amend certain provisions of the Alaska National Interest Lands Conservation Act. There is not intent, I want to reiterate, to link this bill with any of the others considered today.

As all of you know, this subject is very limited in scope. It merely asks to amend ANILCA so as to permit the full and complete development of the Greens Creek Mineral Deposit on Admiralty Island. It would be my preference to enact this bill just as it is currently drafted. However, Representative Seiberling has a different opinion, one that links the Greens Creek provision with a land exchange which would take the Shee Atika Native Corporation off Admiralty Island.

If we hope to pass any legislation on this subject this year, it seems apparent that S. 1330 will have to be expanded from its original intent. As such, I am prepared to take testimony today that would encompass various proposals and land exchange alternatives which have been discussed to date in the House, and I am aware that some of this discussion may also be hearsay, but that is all right anyhow.

I wish to emphasize the fact that the subcommittee is holding this hearing. In so doing, there is no indication that I have changed my position on Admiralty Island land exchange proposals. I have consistently stated that any exchange must meet the following terms:

The amount of cash must be kept at a bare minimum. To look for an appropriation in this climate I think is a dilusion.

If the Shee Atika land on Admiralty is to become wilderness, then the land Shee Atika receives must be taken out of a comparable roadless or quasi-wilderness area. As long as the legislation meets these guidelines, then I believe we can proceed to convince the Senate that it is in the best interests to proceed.

With that profound observation, I would call on our Chief, Chief Max Peterson, Chief of the U.S. Forest Service. I appreciate your being with us. I am sorry to have kept you so long, but you have gotten a little enlightenment on some of our other concerns, as well.

STATEMENT OF R. MAX PETERSON, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. **Peterson**. Thank you, Mr. Chairman. I am glad I do not have to deal with some of those other concerns.

Senator **Murkowski**. It is just like anything else. Things do not happen easy in Alaska.

Mr. **Peterson**. Right.

Mr. Chairman, I have a prepared statement that deals with S. 1330, and I would be glad if you would accept it for the record.

Senator **Murkowski**. It will be entered into the record.

Mr. **Peterson**. Mr. Chairman, I did restrict my testimony just to S. 1330. I am prepared, however, to respond to questions that you might have on other legislation pending on the House side.

As you know, Mr. Chairman, the Alaska Lands Act did exclude the Greens Creek area from the Admiralty Island wilderness. This was for the purpose of allowing the exploration of the Greens Creek mining claims. The 5-year limitation which was written specifically for Misty Fjord was also carried over to Greens Creek.

It is somewhat difficult to explore the Greens Creek claims within that timeframe because the logical method of exploring Greens Creek claims is underground as a part of mining development, rather than doing it all from the surface. That is the reason we have long been in favor of allowing the exploration to proceed by underground methods rather than from surface methods.

We completed a final environmental statement in January 1985. One alternative that we looked at was exchanging Greens Creek for Youngs Creek administratively. In fact, we notified the Congress that we were looking at that possibility.

Shortly after that, Congress got involved and issued a 1-year extension. We then took no further action on our proposed administrative solution. I might point out that the likely result of the exploration of the additional ore body would be to extend the mine life from 17 to 30 or 35 years. This would provide about 650 jobs with an annual payroll of about $15 million.

I would also like to point out that underground exploration would be less environmentally damaging. Also, the company would obtain only mineral patent and not surface patent. So the land itself would remain in public ownership.

Mr. Chairman, as you indicated in your opening comments there have been proposals to link Greens Creek with a Shee Atika exchange. We have never been opposed to doing that, providing it met the type of tests that you indicated.

I personally feel, Mr. Chairman, and I believe this is broadly shared within the administration, that it is a real miscarriage of justice that Shee Atika, who have had their landholdings reaffirmed by Congress twice, has been unable to receive the enjoyment of those lands that they are entitled to. They have been faced with continual lawsuits which are challenging the basic idea that they should harvest timber on their lands.

I can understand that some may oppose the solution that was enacted in 1980; but, without finding a better alternative, it seems like it is unrealistic, unwise, and a miscarriage of justice to continue to hold up Shee Atika's utilization of their lands.

It is not necessary to have legislation for an exchange with Shee Atika. We have indicated on several occasions that we would be happy to work on an exchange that would meet the test of being clearly in the public interest, and that would not impinge on our ability to provide the 4.5 billion feet per decade that is required in the Alaska Lands Act.

With that, Mr. Chairman, I would be glad to answer your questions.

[The prepared statement of Mr. Peterson follows:]

STATEMENT OF
R. MAX PETERSON, CHIEF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the Subcommittee on Public Lands,
Reserved Water and Resource Conservation
Committee on Energy and Natural Resources
United States Senate

Concerning S. 1330, A Bill "To amend section 504 of the Alaska National Interest Lands Conservation Act to allow expanded mineral exploration of the Admiralty Island National Monument in Alaska"

August 4, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the opportunity to be here today to present the Department of Agriculture's views on S. 1330. We can support S. 1330 as a means to resolve the need for an extended period of mineral exploration in the Greens Creek area on Admiralty Island.

The Alaska National Interest Lands Conservation Act (ANILCA) excluded the Greens Creek Area from the Admiralty Island Wilderness. This exclusion recognizes the high degree of mineralization in the area and the potential for a successful economic venture. However, Noranda found it difficult to fully explore its ore body within the 5-year limitation of ANILCA, and representatives of Noranda approached the Forest Service regarding ways to extend the time period. Our initial approach was to consider a boundary adjustment of the Monument under section 103(b) to exclude Greens Creek from the Monument while adding the Youngs Lake area to the Monument.

The Forest Service issued a Final Environmental Impact Statement on January 7, 1985, that evaluated alternatives to adjust the current Admiralty Island National Monument Boundary to exclude the Greens Creek Project area. This area is almost identical to that depicted in the map referenced in S. 1330. The evaluation included an analysis of the expected impacts to the Monument if the ANILCA Section 504 requirements are modified. The likely result is that additional proven ore reserves may be discovered which would extend the mine life from the currently expected 17 years to 33 years. Our analysis indicates that no significant adverse impact on Monument values would be expected to result. In addition, the economic benefits to the local and State economy of an extended mine life could be significant. It is estimated that primary and secondary employment in the Juneau area of approximately 640 jobs with an annual payroll of $15 million could be continued for the extended life of the development.

The proposed legislation would have the added public benefit of ensuring that the surface of the existing claims for which Noranda currently can receive patent are returned to public ownership while allowing the development of the subsurface mineral resources. The Department of Agriculture can support S.1330 as being in the public interest and compatible with the legislation establishing the Monument and providing for mining in Greens Creek.

We notified the Congress by letter on December 24, 1984, of our intention to make a minor boundary adjustment to the Admiralty Island National Forest Monument in accordance with section 103(b). The effect of the boundary adjustment would have been to further essentially the same objectives as the proposed legislation. We have taken no further action on this proposed boundary modification, and we believe that a legislative solution, such as that provided by S. 1330, would be more desirable.

The extension of time for mineral exploration at Greens Creek has been linked to proposals to remove Shee Atika and Sealaska from their lands at Cube Cove on north Admiralty. Public Law 99-235, approved January 9, 1986, extended the mineral exploration period at Greens Creek until December 2, 1986. It also directed the Secretary, based on the availability of appropriations, to undertake negotiations for a temporary protection agreement and ultimate settlement agreement with Shee Atika for their Cube Cove lands. Our negotiations were initiated in February 1986 but have been suspended pending the outcome of H.R. 4883 which is currently under consideration in the House. Various proposals for an exchange of Shee Atika's lands are being discussed in connection with H.R. 4883, but to our knowledge no conclusion has been reached.

Congress granted Shee Atika its lands as part of the overall Admiralty Island compromise. The courts have consistently upheld Shee Atika's right to their land, and we do not feel that Shee Atika should be forced off Admiralty Island because some parties do not want the corporation to own land on the Island. Nor do we feel that Shee Atika and Greens Creek are similar issues. Linking them complicates an already difficult situation.

In our view, Shee Atika should have the full economic and beneficial use of its land. However, if Shee Atika wants to propose a voluntary land exchange with the Forest Service, we would be happy to discuss such an exchange. We would consider a land exchange premised on the principle that a land exchange should be for equal value without adversely impacting the existing contractual obligations of the Government or impairing our ability to offer 4.5 billion board feet of timber per decade from the Tongass National Forest. We feel that all lands within the Tongass National Forest, including Conservation System Units, would have to be examined for their exchange potential.

Legislation is not necessary to negotiate a mutually satisfactory exchange agreement. As with the case of Goldbelt in section 506(b) of ANILCA, a post agreement ratification by Congress might be desirable.

I appreciate the opportunity to comment on S. 1330, and I would be pleased to answer any questions that the Committee may have.

Senator MURKOWSKI. Thank you, Mr. Peterson.

I am curious to know the background from the standpoint of the Forest Service's position to act on a minor boundary adjustment sometime ago which has later converged into a belief that a legislative solution as provided by S. 1330 is more desirable.

Was there pressure brought to bear on the Forest Service over in the House by various Representatives who opposed boundary changes through the administrative process?

Mr. PETERSON. Yes, there was some concern expressed by the House. In all fairness, the legislation is not all that clear on our authority to make the boundary change. Our own counsel said, yes, there is a case to be made that we could make the boundary change administratively; there is also a case to be made that we could not make the boundary change.

Senator MURKOWSKI. And you get stuck with the decision.

Mr. PETERSON. We were concerned that we might end up again with several years of litigation, the outcome of which was not predictable. So if legislation could make it certain, it would be to the benefit of all concerned.

Senator MURKOWSKI. I have some difficulty with some of my colleagues on this committee who are of the opinion that the Department of the Interior particularly should proceed under its administrative authority rather than coming to Congress each time, to the Senate or to the committee, for specific legislative solutions. So your testimony leaves me in somewhat of a dilemma.

While I understand the difficulty you are in under this situation, the fact that you intended to make minor boundary adjustments would have expedited the matter, but if those in the House are opposed to it why you have little other choice. I agree with your contention that the will of Congress certainly has not been done in providing Shee Atika with a land settlement.

I am very pleased at your support for the Greens Creek project. I think as Alaskans reflect more and more on the declining price of oil, there will be more of a realization of the necessity of broadening Alaska's economic base to other resources, because obviously the people of Alaska deserve and require a certain amount of development necessary to underwrite a lifestyle. Without broadening that base, why we are going to have some severe difficulties.

Mr. Peterson, in view of the considerable discussion that has gone on, on how this is to be resolved, how do we take care of Shee Atika's needs, how do we maintain the Admiralty Island in its state of uniqueness, as we consider all these proposed compromises where nobody wants to give up anything. Shee Atika has not had the benefit of congressional intent. There are concerns over the subsistence at Cube Cove which I have always questioned. I flew over Cube Cove the other day and I have yet to see any subsistence activity, but it is an argument that has been submitted time and time again as having some merit, but the realities exist that there are other reasons that the environmental groups have come into this issue.

I think as we reflect on the priority, the priority is the sanctity of Admiralty Island if an equitable exchange can be put together. But the environmental groups have not seen fit to support an alternative, which would suggest that something comes out of a wilderness area or a LUD II area that is submitted in exchange for the sanctity of Admiralty. I understand that one of the proposals being discussed is the Bay of Pillars.

I guess my question to you, sir, is: Do you have any knowledge of whether the Bay of Pillars is more or less environmentally sensitive than Cube Cove?

Mr. PETERSON. I think that the Bay of Pillars, at least a portion of the Bay of Pillars, is quite sensitive because of the concern for the fisheries surrounding Bay of Pillars. It may be sensitive to a different group than is sensitive to Admiralty Island.

I think the real problem is if we can agree on an off-Admiralty exchange with Shee Atika, what would prevent somebody who disagrees with it from frustrating that proposal also, specifically the Bay of Pillars.

Senator MURKOWSKI. Obviously nothing.

Mr. PETERSON. I would have no great confidence that there would not be litigation on the Bay of Pillars.

Senator MURKOWSKI. What would you suggest would be an alternative and workable solution to this dilemma that has been exasperating many of the parties for an extended period of time?

Mr. PETERSON. I think some of the elements in the House proposal probably would work. For example, Baranof Island, the 11,400 acres of surface and subsurface there, that is an area where I do not see the type of conflict that we see at Bay of Pillars. It is worth quite a bit of money. It lends itself to future development. It ties in with other selections in the area, and it has other values other than just timber values.

So I think that is not a bad idea.

Senator MURKOWSKI. Well, is there not something in addition that would have to be proposed in order for that to be acceptable?

Mr. PETERSON. Yes. There has been a proposal to share the Greens Creek subsurface, if that can be worked out with Noranda, and there has been a lot of work done on that. We see that as being within the idea of giving them something of value that probably would not be tied up.

Our big concern, in addition to environmentally sensitive areas which may just get tied up again, has been, as you indicated earlier, the amount of cash that is involved or, in essence, cash.

We value Shee Atika's holdings on Admiralty, and I believe they do too, at somewhere around $69 to $70 million. The proposals that have been pending over on the House side would appear to be about somewhere between $95 to $110 million with substantial amounts of cash involved. We simply do not see how we could say that that is in the public interest.

Senator MURKOWSKI. Well, then you are leaving me with a dilemma. You and I both know we are not going to get an appropriation.

Mr. PETERSON. No. I think you could use Baranof. I think you could use Greens Creek subsurface. We think a portion of the Bay of Pillars, maybe 9,000 acres or so that were discussed earlier, might be feasible. In other words, we are not against putting together a proposal that would be in the public interest and would give Shee Atika the value that it is giving up. Our concern is that it seems that everybody thinks that that could be done in a way that nobody gives up anything, and we simply do not know how that can be done.

Senator **Murkowski**. I agree with you, sir. How about the $25 million in receipts in the Forest Service?

Mr. **Peterson**. Well, whether it comes out of receipts or a direct payment, that money is out of the Treasury.

Senator **Murkowski**. Well, the $25 million is not under the appropriations process. It does not need an appropriation.

Mr. **Peterson**. I know, but it comes out of the Treasury one way or the other.

Senator **Murkowski**. What would be your attitude if it took $25 million out of Treasury, or the Forest Service receipts?

Mr. **Peterson**. I think we would like to keep the cash, however it is paid, low.

Senator **Murkowski**. Is $25 million low?

Mr. **Peterson**. No, I do not think $25 million is low. I think we would have great problems if it gets above $5 to $10 million as an equalization.

Senator **Murkowski**. You would have great problems if it got over $5 or $10 million?

Mr. **Peterson**. I think so.

Senator **Murkowski**. Would you oppose it if it got over $5 or $10 million?

Mr. **Peterson**. I think we would have to look at the entire package.

Senator **Murkowski**. Well, we are talking about the package that you have outlined here.

Mr. **Peterson**. If it gets over $5 or $10 million, yes, I think it would be opposed within the administration.

Senator **Murkowski**. OK. I assume you mean that OMB would oppose it at least?

Mr. **Peterson**. I suspect broader than that within the administration, because a reduction in receipts is just as much as a direct expenditure.

Senator **Murkowski**. That is very true. What would you support in dollars from Forest Service receipts?

Mr. **Peterson**. As I have indicated, I think $5 or $10 million would really be stretching.

Senator **Murkowski**. OK. And then $5 or $10 million, 9,000 at the Bay of Pillars, and a combination then of——

Mr. **Peterson**. Baranof and Greens Creek.

Senator **Murkowski** [continuing]. Baranof and Greens Creek.

Mr. **Peterson**. And I am not stating that on any kind of a take it or leave it.

Senator **Murkowski**. How about roads on Baranof for Shee Atika?

Mr. **Peterson**. The earlier proposal was for us to construct about 4.5 miles of road which would provide some access to national forest land as well as Native lands, and I think that is not nearly as objectionable as some other possibilities.

Senator **Murkowski**. You could probably do that, then? Well, I think we could coordinate an agreement that would be, for all practical purposes, bombproof, if we could get all parties in agreement. But obviously somebody is going to have to give up something. There is timber harvesting underway on Admiralty now.

Mr. Peterson. Yes.

Senator Murkowski. And how much timber is down and has been downed for at least 2 years as a consequence of the helicopter logging?

Mr. Peterson. I do not know. There is quite a bit being removed this summer and, to the extent that they have it removed, I am not sure. I will find out if we know.

[Pause.]

Mr. Peterson. As of August 4, 1986, a total of approximately 820 acres have been harvested by Shee Atika at Cube Cove. We do not know the volume figure.

They moved quite a bit in the last couple of months. Maybe the witnesses from Shee Atika here could give you those figures.

Senator Murkowski. Well, I gather that for some period of time it was inaccessible, and to get it out the road had to be extended, and we seem to be getting into a situation where in our dilemma to maintain the sanctity of the island we are utilizing the worst forest practices imaginable in cutting timber and allowing it to lay there for an extended period of time. Spruce beetle infestation and everything else occurs in that kind of dead timber.

Mr. Peterson. It is really too bad that they are not able to use a log transfer facility. They are expending a lot of money to move logs using other methods, which is really a waste of funds. The funds are coming out of their pocket.

Senator Murkowski. I could not agree with you more. As I told you, I flew over the area not so long ago. Then I flew over Edna Bay, which is one of the most extensive areas ever logged in Alaska during the Second World War where the big Davis rafts were put together and towed down to the Puget Sound area. When you see those areas where they put the logs in, you would not even know there had been any activity. The second growth is so much better than the virgin timber, it makes one wonder just what a lot of this so-called environmental concern is all about. Because very often people do not go to those areas, and refuse to recognize the significant contribution to the forestation that has occurred as a consequence of utilization.

You can go into the other areas and you observe the blowdown and whatnot, and away you go. Well, you and I have conversed about how to make it happen, and I assure you the committee is willing to work with you and with your associates to try and resolve this problem. But in the meantime, the timber on Admiralty is being cut, and somebody is going to have to make some kind of a positive suggestion in order to make a cooperative agreement here.

I want to thank you for your testimony. I have no specific further questions.

Mr. Peterson. One other item, Mr. Chairman, I neglected to mention is that Sealaska who gets the subsurface under the surface estate, there is 9,240 acres in the Hobart Bay where Gobel was moved off of Admiralty. We think it would be a good idea to give Sealaska that subsurface. It is a split estate now. It does not make any particular sense for the Government to maintain the surface under that. We think that should be a part of the package. That would be we think a noncontroversial part of the package.

We are certainly available, Mr. Chairman, to work with you and others. We are not assuming we are the last people that should make the judgment. We will be perfectly willing to work with you to provide information, to help answer questions, and so on.

Senator MURKOWSKI. Well, we will proceed.

Thank you.

Mr. PETERSON. Thank you, Mr. Chairman.

Senator MURKOWSKI. Our next witnesses are panel 13: Mr. Steve Silver, Washington counsel for Amselco Minerals. I believe that is the correct pronunciation. He will be joined by Mr. Munday, assistant to the mayor of Angoon. Mr. Gamble, president of Kootznoowoo. Mr. Bolima, Kootznoowoo; and Mr. Alvin Edenshaw, Haida Corp.; and Mr. Ted Borbridge, chairman of the board, Shee Atika; and Mr. Loescher. That is it.

I am going to limit this testimony to 3 minutes, for a couple of reasons. One, we have got a court reporter who is getting tired. I am getting tired. You are getting tired, and if you cannot say it in 3 minutes, submit it for the record and we will read it and proceed accordingly.

Mr. Steve Silver.

STATEMENT OF STEVE SILVER, WASHINGTON COUNSEL, AMSELCO MINERALS CO.

Mr. SILVER. Thank you, Mr. Chairman.

I am Steve Silver, counsel to Amselco Minerals Co. I have a longer statement which I have submitted for the record and would ask that it be included.

Senator MURKOWSKI. It will be entered into the record as if read.

Mr. SILVER. The Joint Venture would like to express its appreciation to you for the introduction of S. 1330. This legislation recognizes the problem experienced by the Joint Venture in exploring the Greens Creek ore body under ANILCA in its 5-year timeframe.

The Joint Venture originally supported S. 1330 as the most straightforward solution to the Greens Creek exploration program. Under this bill, the Joint Venture would have the opportunity to define the extent of the ore body at Greens Creek. However, we too recognize the reality that any legislation relating to Greens Creek mineral activity has a greater chance of success if other Admiralty Island land tenure issues are also dealt with in a comprehensive manner.

Consequently, the Joint Venture has participated in the comprehensive agreement negotiations. These negotiations have led to the introduction of H.R. 4883 which appears to be a more viable option now, and I will direct the remainder of my testimony to it.

While the Joint Venture supports H.R. 4883, we do so based on the assumption that prior to final passage the Greens Creek Joint Venture will have reached an agreement with Sealaska or any other entity which would own the Greens Creek subsurface to determine how continuing exploration and development outside our perfectable claims will be conducted if such entity receives title to the subsurface as a result of the legislation's enactment.

Negotiations between the Joint Venture and Sealaska on this point are still ongoing. The Joint Venture has carefully studied H.R. 4883 and other proposals under consideration by the House Public Lands Subcommittee, and we recommend some changes.

We are particularly concerned about the provisions of the legislation that create joint ownership of subsurface areas surrounding the Joint Venture's existing claims. H.R. 4883 currently provides a 60 percent undivided fee interest to Sealaska and a similar 40 percent interest to Shee Atika. Rather than providing for split ownership, the Joint Venture supports the formation of a third entity which would receive the land and mineral rights conveyed by the Federal Government at Greens Creek. That entity, composed of Sealaska and Shee Atika, would act as a single owner of the subsurface.

We believe this approach, which would enable the Joint Venture to develop the area without separate agreements with Sealaska and Shee Atika, is the most effective and efficient means of developing the area.

We also recommend that Congress include language in 4883 to require the formation of a third entity as a condition of conveyance to the Greens Creek subsurface. Formation of this group should be mandatory, not discretionary. Further, the Joint Venture supports an amendment to 4883 which would enable the entire Greens Creek conveyance to be conveyed to Sealaska in the event Shee Atika rejects the offer to it contained in the bill.

The Joint Venture also supports an amendment which has been proposed by Sealaska which provides for a boundary adjustment to remove the Greens Creek area from the Admiralty Island National Monument and place the Young's Lake area within the monument.

Senator **Murkowski**. I would ask that you finish your statement.

Mr. **Silver**. This should be done in this bill since 4883 does repeal minor boundary adjustments for the national forest monuments.

In summary, thank you again for introducing S. 1330. We hope that we can work with you and other Members of Congress for passage of a comprehensive agreement in legislation which would resolve all land-tenure issues on Admiralty Island.

[The prepared statement of Mr. Silver follows:]

Statement of Steve Silver
Greens Creek Joint Venture
on S. 1330

United States Senate
Committee on Energy and Natural Resources

August 4, 1986

Mr. Chairman and members of the committee, I am Steve Silver, counsel to Greens Creek Mining Company. The project is owned by a joint venture, which includes as operator Greens Creek Mining Company, a wholly owned subsidiary of Amselco Minerals Company, Exalas Resources, and Texas Gas Exploration Company. Thank you for the opportunity to testify on behalf of the Greens Creek Joint Venture on S. 1330, a bill to allow continued mineral exploration and development at Greens Creek.

The Greens Creek deposit located in the northern portion of the Admiralty Island National Monument contains better than average grade accumulations of lead, zinc, silver and gold. First discovered in 1974, the deposit was explored by the Greens Creek Joint Venture from 1975 to 1980. Exploration continued over the next five years under provision of the Alaska National Interest Lands Conservation Act (ANILCA). That law confined exploration activities to core claims and unperfected claims located within a three-quarter mile radius of core claims. Despite the limitation, our exploration has found significant mineralization within the three-quarter mile exploration zone and has indicated good potential for finding mineralization in the surrounding area.

In December, 1985, the Joint Venture faced a five-year exploration deadline set by ANILCA in 1981. Anticipating that cutoff date, the Joint Venture several months earlier entered into negotiations with the U.S. Forest Service and various groups concerned with development activity on Admiralty Island. The purpose of the negotiations was to arrive at a comprehensive agreement regarding land use on the island, which would include a provision allowing the Joint Venture to further explore and define additional zones of mineral potential in the Greens Creek drainage area and to provide for development of any results of such exploration. This would be in addition to the existing core and currently perfectable claims which the Joint Venture has the right to develop under the existing terms of the Alaska Lands Act, a process in which the Joint Venture is now engaged. No comprehensive agreement was reached, but with the support of members of this committee Congress did provide the Joint Venture with a one-year extension of the ANILCA deadline so it could continue exploration while negotiations proceeded.

The Joint Venture is taking advantage of this extension. Our field work this season has included further exploratory drilling which the one year extension permits.

The Joint Venture would like to express its appreciation to Senator Murkowski for the introduction of S. 1330. This legislation recognizes the problems experienced by the Joint Venture in exploring the Greens Creek ore body under ANILCA, which applied to the Admiralty Island deposit the regime developed for another mining project located on Misty Fjords Island.

The Misty Fjords deposit consists of a widely disseminated mineralized core with definite boundaries. Thus the five-year exploratory deadline contained in ANILCA allowed sufficient time for the exploration program to identify the limits of the ore body. However, the deposit at Greens Creek is a vein-type ore body which shrinks and swells in thickness and often folds over on itself, thus making it more difficult and time consuming to explore and develop.

The Joint Venture originally supported S. 1330 because it is the most straightforward solution to the Greens Creek exploration problem. Under this bill, the Joint Venture would have the opportunity to define the extent of the ore body at Greens Creek. However, we recognize the reality that any legislation relating to Greens Creek mineral activity has a greater chance of success if other Admiralty Island land tenure issues are also dealth with in a comprehensive manner. Consequently, the Joint Venture has participated in the comprehensive agreement negotiations I discussed earlier in my testimony. These negotiations have lead to the introduction of H.R. 4883. Since this bill appears to be the more viable option now, I will direct the remainder of my testimony to H.R. 4883 and the issues surrounding its consideration.

While the Joint Venture supports H.R. 4883, we wish to inform the Committee that we do so based on the assumption that prior to final passage, the Greens Creek Joint Venture will have reached an agreement with Sealaska or any other entity which would own the Greens Creek subsurface to determine how continuing exploration and development outside our perfectable claims will be conducted if such entity receives title to the subsurface as a result of the legislation's enactment. However, negotiations between the Joint Venture and Sealaska are still ongoing.

The Joint Venture has carefully studied H.R. 4883 and other proposals under consideration by the House Public Lands Subcommittee and we recommend some changes. We are particularly concerned about the provisions of the legislation that create joint ownership of subsurface areas surrounding the Joint Venture's existing claims. H.R. 4883 currently provides a 60% undivided fee interest to Sealaska and a similar 40% fee interest to Shee Atika.

Rather than providing for a split ownership, the Joint Venture supports the formation of a third entity which would receive the land and mineral rights conveyed by the federal government at Greens Creek.

That entity, composed of Sealaska and Shee Atika, would act as the single owner of the subsurface. We believe this approach, which would enable the Joint Venture to develop the area without separate agreements with Sealaska and Shee Atika, is the most effective and efficient method of developing the area.

We also recommend that Congress include language in H.R. 4883 to require the formation of the third entity as a condition of conveyance of the Greens Creek subsurface. Formation of this group should be mandatory, not discretionary. Further, the Joint Venture supports an amendment to H.R. 4883 which would enable the entire Greens Creek conveyance to be conveyed to Sealaska in the event Shee Atika rejects the offer to it contained in the bill.

The Joint Venture also has a number of technical amendments to propose to the legislation. These amendments relate to Section 9, the "Mining Activities" portion of the bill and include:

(1) Adding the terms "milling purposes" to subsection (1) of Section 9. This conforms to the existing language in Title V of the Alaska Lands Act.

(2) Providing that the waiver of Section 503 (f)(2)(A) shall apply to both surface and subsurface lands. If the committee wishes to make this waiver effective it should apply to all lands conveyed.

(3) Replacing subsections (4) and (5) with references to existing provisions of the Greens Creek Joint Venture operating EIS which already provides standards for public use and reclamation. The standards have proven satisfactory and have been through a public hearing process in Alaska. We see no reason why they should not be adequate for this bill's purpose.

(4) A clarification of subsection (6) to make clear that any decision by the Secretary not to reissue the surface lease to Sealaska or its designee does not alter the obligation of the United States to provide adequate access on, over, or through its surface lands to the existing claims at Greens Creek for mineral development. This protects not only the subsurface owner, but also the United States from a potential inverse condemnation suit. If the lease is not renewed, the Secretary must be required to provide access under the terms of Sections 504(g) and 1110(b) of the Alaska Lands Act and other relevant statutes.

We believe these amendments are strictly technical and conform Section 9 of H.R. 4883 to existing law and the intent of the bill.

The Joint Venture also supports an amendment which has been proposed by Sealaska. This amendment provides for a boundary adjustment which would remove the Greens Creek area from the Admiralty Island National Monument and place the Youngs Lake area in the Monument. It also should be done in this bill since Section 17(a) of the bill repeals the minor boundary adjustment authority for National Forest Monuments. This provision would require a later act of Congress to change the boundary, and now is a good time to make the adjustment.

The Joint Venture wishes again to express its appreciation for the introduction of S. 1330 and for the opportunity to appear at today's hearing. We are hopeful that the legislation's intent will be carried out as part of a comprehensive agreement resolving all land tenure issues on Admiralty Island.

Senator MURKOWSKI. I hope so, too, Mr. Silver.

Mr. William Munday, assistant to the mayor, Angoon.

STATEMENT OF WILLIAM L. MUNDAY, ASSISTANT TO THE MAYOR, ANGOON, AK

Mr. MUNDAY. Mr. Chairman, my name is William L. Munday. I am the assistant to the mayor of Angoon, and am here to present testimony on behalf of the city of Angoon.

As you probably know, Angoon is the only village on Admiralty Island and the residents of the village have been working for decades to protect the subsistence lifestyle which has sustained them for centuries.

I have only been in Angoon for 3 years, but that is more than enough time to understand and appreciate the love and concern that the Tlingits of Angoon have for the land and waters that sustain their ancient culture.

The love that the people feel for the land is not a proprietory one. We are not talking about pride of ownership. Their desire to protect the land is rooted in the belief that land and waters that provide their food are sacred, and that is true.

Until about 80 years ago, the people of Angoon had no concept of money, as such. It was the resources of the land and waters which provided all their food and their clothing; their religious and ceremonial things came from the land.

Today the people of Angoon have one of the lowest per capita incomes in the United States. This does not mean they live in poverty. The people in Angoon are healthy and happy and have no desire to trade their lifestyle for money. There is little regular employment in Angoon, but this does not mean people there do not work. Living off the land is hard work.

Many mornings I have watched as Peter Frank, Floyd Kookesh, or one of the Demmert boys prepare to go out hunting or fishing. They are all good hunters and fishermen, but some days they only come home with a cold. I have been both hunting and fishing with Floyd and others and can attest to the fact that subsistence living is continuous, difficult, and sometimes dangerous work.

The people of Angoon do not ask you to save Admiralty Island for environmental reasons, because our cause, our sole concern, is survival. We are here to protect and preserve a way of life. And, Mr. Chairman, Mayor Gamble has not sent me here to give you any fancy reasons for doing what we are attempting to do today. I am here to tell you that preserving the 100,000 or so acres which will be affected by logging in Cube Cove are necessary to the survival to the Tlingits of Angoon. I will submit documents from three well-known anthropologists which will prove this point.

Mr. Chairman, I have come to tell you that I believe, and hope you will, that this is a larger issue than land protection. It is an issue that goes to the heart of what the United States is all about: Respect for each other's rights and beliefs.

The people of Angoon are only asking for a chance, a chance to survive as a culture, and not to have that culture unraveled thread by thread. They have no desire to become a welfare community, and as long as their subsistence is protected, they won't need it.

In conclusion, I will concur with others who have or will testify today, that all of the parties involved in the Admiralty Island issue have worked long and hard. They have invested time and money and even strained a few relationships. But we have reached a point where we believe all concerns have been met to the greatest degree that is politically possible.

Senator MURKOWSKI. I would appreciate if you would summarize your remaining remarks, please.

Mr. MUNDAY. I have a very short statement.

We have previously stated in the House and we would like to restate here that we believe that within the framework of the proposed legislation, there is the opportunity to make history. The manner in which the Admiralty Island issues are settled will ultimately be viewed as the signal lamp regarding the future of nearly 20,000 Natives of southeast Alaska and perhaps as the eventual future of all Alaska Natives.

I would like to conclude with a quote made by President Franklin D. Roosevelt 51 years ago, who said:

> A forest is an integral part of our natural land covering and the most potent factor in maintaining Nature's delicate balance. Forest must be lifted above mere dollars's and cents' considerations.

Senator MURKOWSKI. Thank you.

Mr. MUNDAY. The people of Angoon and all subsistence people require nature's delicate balance to sustain their culture. From that perspective, we ardently urge you to take the steps to halt the falling of trees on Admiralty Island and assure our cultural existence as the last stronghold of the Tlingits culture.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Munday follows:]

TESTIMONY OF WILLIAM L. MUNDAY
ASSISTANT TO THE MAYOR OF ANGOON
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION
OF THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
CONCERNING S. 1330 AND OTHER ISSUES RELATED TO
ADMIRALTY ISLAND RESOURCE MANAGEMENT

August 4, 1986

Mr. Chairman, my name is William L. Munday. I am the Assistant to the Mayor of Angoon, and am here to present testimony on behalf of the City of Angoon.

Angoon is the only village on Admiralty Island and the residents of the village have been working for decades to protect the subsistence lifestyle which has sustained them for centuries. I've only been in Angoon for three years, but that's more than enough time to understand and appreciate the great love and concern that the Tlingits of Angoon have for the land and waters that sustain their ancient culture.

The love that the Tlingit feel for the land is not a proprietory one - it's not pride of ownership. Their desire to protect the land is rooted in a religious belief that the land and waters which provide their food are sacred, and that's true Mr. Chairman.

Until about 80 years ago, the Tlingit had no concept of money as such. It was the resources of the land and waters which provided all their food and their clothing - their religious and ceromonial things came from the land. Ninety years ago all the money in Angoon was worn on chains as decoration. This was, by the way, less than $100.00.

Today the people of Angoon have one of the lowest per capita incomes in the United States. This does not mean they live in poverty - the people in Angoon are healthy and happy and have no desire to trade their lifestyle for money. There is little regular employment in Angoon, but this does not mean people there don't work. Living off the land is hard work. Many mornings I've watched as Peter Frank, Floyd Kookesh or one of the Demmert boys prepared to go out hunting or fishing. They are all good hunters and fishermen, but some days they only come home with a cold. I've been both hunting and fishing with Floyd and others, and can attest to the fact that subsistence living is continuous, difficult, and sometimes dangerous work.

The people of Angoon do not ask you to save Admiralty Island for environmental reasons, because our cause, our sole concern, is survival. We are here to protect and preserve a way of life.

And, Mr. Chairman, Mayor Gramble has not sent me here to give you any fancy reasons for doing what we're attempting to do today. I'm here to tell you that preserving the 100,000 or so acres we're talking about is necessary to the survival of this tribe. I'll submit documents from three well-known anthropologists which will prove this point.

Mr. Chairman, I've come to tell you that I believe, and hope you will, that this is a larger issue than land protection. This is an issue that goes to the heart of what the United States is all about - respect for each others rights and beliefs. The people of Angoon are only asking for a chance - a chance to survive as a culture, and not to have that culture unraveled thread by thread. They have no desire to become a welfare community, as long as their subsistence is protected, they won't need it.

In conclusion, I will concur with others who have or will testify today, that all of the parties involved in the Admiralty Island issue have worked long and hard. We have invested time and money, and even strained a few relationships, but we have reached a point where we believe all concerns have been met to the greatest degree that is politically possible.

Thank you for the opportunity to testify today.

Senator **Murkowski**. Thank you.
Mr. Ivan Gamble.

STATEMENT OF IVAN P. GAMBLE, PRESIDENT, KOOTZNOOWOO, INC.; ACCOMPANIED BY STERLING BOLIMA

Mr. **Gamble**. Mr. Chairman, my name is Ivan Gamble, and I am testifying on behalf of Kootznoowoo, Inc. Two thirds of Kootznoowoo shareholders are residents of Angoon, AK, the Native village which is the only community on Admiralty Island.

Kootznoowoo is proud of its efforts over the years since the passage of the Settlement Act to successfully blend the corporate interests created by that act with the traditional and municipal interests which existed in Angoon long before the Native claims were settled.

The specific subject of today's hearing is S. 1330. The issues raised by S. 1330 are significant, but they are only a small part of the overall situation on Admiralty Island which should be addressed in a comprehensive legislation this year.

This committee is certainly aware of the value and the character of Admiralty Island and the recent history of conflict which has involved most of the interests who will be testifying today.

The most important point to be made today is that this committee and this Congress has a unique and possibly singular opportunity to provide a comprehensive and lasting solution to the many conflicts which have grown over the years on Admiralty Island.

From our perspective, a comprehensive solution should meet four important objectives. They are:

To resolve the legal and political conflicts affecting Shee-Atika Corp., which stem from land selections on Admiralty Island, so that the corporation may enjoy the economic benefits which were intended to be conveyed by ANCSA.

To protect the nationally recognized natural values on Admiralty Island by removing substantial private ownership interests which may be commercially developed in the future.

To assure that legitimate and authorized development opportunities on Admiralty, such as those addressed by S. 1330, can proceed without further conflict.

To preserve and protect the cultural values and the traditional subsistence uses of Admiralty Island residents.

Such a solution is in sight. During the period from July 9 through July 11, Kootznoowoo and the city of Angoon hosted a series of meetings at which the three Native corporations involved on Admiralty Island and the city of Angoon reached substantial agreement on a comprehensive legislative proposal. This agreement, which is significant given the history of litigation and conflict between these parties, has provided the essential substance of a bill which is now under consideration. Kootznoowoo is in strong support of that bill.

Enactment of this bill would bring a rapid end to conflict regarding Admiralty Island and would satisfy the important objectives outlined earlier.

I have attached to my testimony those portions of the consensus proposal which relate specifically to Kootznoowoo, Inc., along with brief analysis of each provision.

Senator **Murkowski**. I would ask that you summarize your remaining statement, Mr. Gamble.

Mr. **Gamble**. We believe the entire package should be considered and approved by the Senate along with the provisions of S. 1330. We thank the Senator from Alaska and the entire committee for devoting its time and attention to the issues of Admiralty Island and pledge to work constructively with you toward a solution.

My presentation was longer and I request that it be entered into the record.

Thank you.

[The prepared statement of Mr. Gamble follows. The booklet entitled "Kootznoowoo Selection Lands" has been retained in subcommittee files.]

TESTIMONY OF IVAN P. GAMBLE
PRESIDENT, KOOTZNOOWOO, INCORPORATED
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION
OF THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

CONCERNING S. 1330 AND OTHER ISSUES RELATED TO
ADMIRALTY ISLAND RESOURCE MANAGEMENT

August 4, 1986

Mr. Chairman, my name is Ivan Gamble, and I am testifying on behalf of Kotznoowoo, Incorporated. Kootznoowoo is a native village corporation, organized under the laws of Alaska and created pursuant to the terms of the Alaskan Native Claims Settlement Act (ANCSA). Two-thirds of Kootznoowoo shareholders are residents of Angoon, Alaska, the native village which is the only community on Admiralty Island. The other third of our shareholders live in other places in Alaska and throughout the United States.

I offer this background information because, while Kootznoowoo represents Angoon residents in the form of a corporation-for-profit formed under the terms of ANCSA, representatives of the community for municipal and traditional tribal purposes will also be submitting testimony. Kootznoowoo is proud of its efforts over the years since the passage of the Settlement Act to successfully blend the corporate interests created by that Act with the traditional and municipal interests which existed in Angoon long before the native claims were settled. It is in that spirit that the corporation and the other representatives of Angoon approach this historic legislative proposal regarding Admiralty Island.

The specific subject of today's hearing is S. 1330, a bill intended to allow those interests planning to develop a major mine on North Admiralty Island to extend their mineral exploration and possibly to expand their resource ownership so as to improve the economic prospects for the project. From the perspective of Kootznoowoo, Inc., and no doubt many of the others from whom you will be hearing today, the issues raised by S. 1330 are significant, but they are only a small part of the overall situation on Admiralty Island which should be addressed in comprehensive legislation this year.

This Committee is certainly aware of the value and character of Admiralty Island, and the recent history of conflict which has involved most of the interests who will be testifying today.

Certainly, Kootznoowoo and its home community of Angoon have been significant participants in this conflict. The city and the corporation have both resisted development initiatives on the Island which would do lasting damage to the traditional subsistence culture of our shareholders and residents of

Angoon. Both the corporation and the city have also supported the protection of important natural values on Admiralty Island. We have not done so out of hostility to our brothers in other native corporations, but rather to preserve our subsistence land, and way of life. The conflict has been uncomfortable for all of us, as our tribal elders made clear in recent House testimony which I would like to submit for your record.

The most important point to be made today is that this Committee, and this Congress, has a unique and possibly singular opportunity to provide a comprehensive and lasting solution to the many conflicts which have grown over the years on Admiralty Island. For many months, most of the parties involved, including Kootznoowoo, have worked diligently to craft a cooperative and comprehensive solution to these problems.

From our perspective, a comprehensive solution should meet four important objectives. They are:

o To resolve the legal and political conflicts affecting Shee-Atika Corporation, which stem from land selections on Admiralty Island, so that the corporation may enjoy the economic benefits which were intended to be conveyed by ANCSA.

- To protect nationally recognized natural values on Admiralty Island by removing substantial private ownership interests which may be commercially developed in the future.

- To assure that legitimate and authorized development opportunities on Admiralty, such as those addressed by S. 1330, can proceed without further conflict.

- To preserve and protect the cultural values and traditional subsistence uses of Admiralty Island residents.

In specific terms, such a law would not only enhance and protect the resource position and economic prospect for the Green's Creek Mine, but would also remove commercially developable interests on the Island held by three Native corporations (Shee-Atika, Sealaska, and Kootznoowoo); give lasting protection for subsistence and environmental purposes to significant areas such as Cube Cove; relocate Native corporate resources to other locations in Southeast Alaska where they can make an economic contribution to the region and the State; and resolve numerous other issues which have prolonged the conflict and resulted in economic stalemate.

Such a solution is in sight. During the period from July 9 through July 11, Kootznoowoo and the City of Angoon hosted a series of meetings at which the three Native corporations involved on Admiralty Island, and the City of Angoon, reached substantial agreement on a comprehensive legislative proposal. This agreement, which is significant given the history of litigation and conflict between these parties, has provided the essential substance of a bill which is now under consideration in the Interior Committee of the House of Representatives. Kootznoowoo is in strong support of that bill, and would also support the inclusion of elements of S. 1330, should the entire package be considered in the Senate.

Enactment of this bill would bring a rapid end to conflict regarding Admiralty Island, and would satisfy the important objectives outlined earlier.

I have attached to my testimony those portions of the consensus proposal which relate specifically to Kootznoowoo, Inc., along with brief analysis of each provision.

The major provision affecting Kootznoowoo, Inc. provides for the federal acquisition, by exchange, of 3,500 acres of commercial timber rights and mineral rights owned by the corporation on Admiralty Island in proximity to the village of

Angoon. This acquisition is consistent with the objective to remove commercially developable potential from the Island where it would conflict with traditional and subsistence values or natural values.

The Kootznoowoo acquisition would be accomplished by an exchange of Forest Service lands off Admiralty Island. The language of the provision mandates the acquisition, the interests to be acquired, and the schedule for completion. Finally, it establishes a "pool" of lands in Southeast Alaska which would be the basis for exchange in compensation for the Kootznoowoo property on Admiralty Island. Unlike other exchanges in the consensus proposal, the Kootznoowoo exchange would be solely on the basis of equal value determined after the passage of the Act.

The Kootznoowoo provision is unique in that the lands included in the pool for exchange are small tracts, having a primary value for recreation, rather than timber or other resources. This is the result of a suggestion by Alaska Congressman Don Young, who felt that pressures on the Southeastern timber base were already substantial, and that recreational tracts in exchange make substantially greater sense. Details on the tracts in the exchange pool are included in the materials submitted to the Committee, and we hope that you will agree with us that, while economic return from these properties is relatively speculative, they do offer the opportunity to increase private ownership in a region of Alaska which is almost exclusively controlled by the federal government.

While no tract in Southeast Alaska appears completely free of some differences of opinion, all the areas that we propose have cleared State of Alaska review, and many are free of any environmental objection. I have attached the State correspondence, which reflects the State's lack of objection to the tracts, and expresses State support for the off-Island exchange itself.

We are well aware of objections by the United States Forest Service. Indeed, the Forest Service has objected to the vast majority of provisions in the overall Admiralty proposal. It is our firmest belief, based on past experience, current discussions, and other factors that in the absence of specific and convincing Congressional direction, the Forest Service will not move constructively on its own to resolve the Admiralty situation, or to bring the Kootznoowoo acquisition to a conclusion on terms which meet Congressional objectives and are fair to the people of Kootznoowoo.

In our view, Congress, not the Forest Service, represents the American people regarding the public interest on Admiralty Island. Congress must give clear and compelling directions for the acquisition of all Admiralty Island property, including Kootznoowoo's, if the objectives of a comprehensive bill are to be met. Overall, it is our goal to avoid conflicts and to serve the great desire of many Alaskans to find additional recreational and general real estate land in Southeast Alaska to be transferred from the federal government to private interests where it might be used and developed.

Two other lesser provisions are included in the consensus proposal which relate specifically to Kootznoowoo, Inc. The first provides that Kootznoowoo shall succeed, on an equal value exchange basis, to lands in an existing federal timber sale area on Prince of Wales Island, should the existing timber sale in that area be terminated or relinquished. In the event this occurs, Kootznoowoo would also have the right to exchange, again on an equal value basis, for land which would connect the specific timber sale area with previously selected Kootznoowoo lands. Overall, this amendment makes possible substantial consolidation of land ownership in Southeast Alaska, and should lead to more sensible and economic timber harvest. In all cases, lands exchanged by Kootznoowoo would come from existing corporation lands, and would be exchanged on an equal value basis only, so there would be no net effect on the overall commitment of federal timber lands in Southeast Alaska.

Finally, there is a provision which would statutorily establish a common conveyance date for Kootznoowoo lands. For a variety of administrative and bookkeeping purposes, the consolidation of conveyance dates alleviates substantial burdens for Native corporations, particularly where, like Kootznoowoo, conveyances have been delayed over many years, and have been made in piecemeal fashion at various times.

The just described proposals, which pertain to Kootznoowoo, Inc., are but a part of the overall agreement. Within that agreement there are provisions which resolve important and long-lasting problems for other Native corporations including Shee-Atika and Sealaska, and numerous other parties with legitimate interests regarding Admiralty Island. We believe the entire package should be considered and approved by the Senate along with the provisions of S. 1330. We thank the Senator from Alaska, and the entire Committee, for devoting its time and attention to the issues of Admiralty Island, and pledge to work constructively with you toward a solution.

PROPOSED AMENDMENT FOR ACQUISITION OF KOOTZNOOWOO, INCORPORATED LANDS ON ADMIRALTY ISLAND

( ) Section 506(a)(8) of the Act (ANILCA) is hereby amended by adding at the end thereof the following new subparagraph:

"(D)(i) The Secretary of Agriculture is authorized and directed to acquire the lands and interests of Kootznoowoo, Incorporated on Admiralty Island specified in clause (iii) of this subparagraph.

"(ii) The acquisition shall be by the exchange of Federal lands and interests for those acquired from Kootznoowoo and shall be for equal value as determined by relevant market data, negotiation between the parties, and arbitration, if necessary.

"(iii) No later than 120 days after the date of enactment of the Admiralty Island Exchange Act of 1986, the Secretary shall offer to acquire, by exchange for some or all of the Federal lands identified in part (iv) of this subparagraph, the following lands and interests of Kootznoowoo on Admiralty Island conveyed to Kootznoowoo under the terms of section 506(a)(3)(A): all rights to the commercial harvest of timber (but reserving other surface and subsistence uses) and all right, title, and interest in the subsurface estate of such lands (but reserving sand, gravel, and other common varieties of mineral materials on such lands). Any rights to timber on Admiralty Island acquired by the United States from Kootznoowoo shall be retained by the United States, and such timber shall not be harvested except in accordance with section 503(d) of this Act.

"(iv) As compensation for lands and interests acquired pursuant to this subparagraph (D), the Secretary, on behalf of the United States, shall offer to convey in exchange all or such part of the following Federal lands (as depicted on the maps entitled "Kootznoowoo Selection Lands" dated July 1986) in fee, in the order listed, as is necessary to achieve equality of value between the Kootznoowoo lands and interests acquired and the Federal lands conveyed: (1) North Point Higgins Coast Guard Base; (2) Betton Island and Back Island; (3) Couverden Point; (4) No Thorofare Bay; (5) Mansfield Peninsula (Barlow Cove and Piling Point); (6) Siginaka Islands; (7) Pleasant Island; (8) Southeast End of Krestof Island; (9) Shelter Island; (10) Eagle River; (11) Porpoise Islands; (12) St. James Point; (13) Hawk Inlet; (14) Douglas Island; (15) Seal Cove; and (16) Nahenia Bay.

"(v) Should the lands in Clause (iv) be insufficient to provide equal value, other federal lands of similar character shall be identified by the Secretary and the Corporation and offered for conveyance under the terms of this subparagraph.

"(vi) Upon receipt of a notice setting forth the Secretary's offer and the Secretary's valuation of the lands and interests to be acquired by the United States and those offered to Kootznoowoo, Kootznoowoo shall have 60 days within which to either accept the offer or to notify the Secretary that Kootznoowoo differs with the Secretary's valuation of lands and interests involved in the exchange and desires to submit this issue to arbitration on terms which are acceptable to both parties. If Kootznoowoo neither accepts the offer nor requests an arbitration within 60 days after Kootznoowoo's receipt of the offer, the Secretary may in his discretion either rescind the offer or provide additional time for Kootznoowoo to respond. If Kootznoowoo accepts the offer, conveyance of the exchange lands between the Secretary and Kootznoowoo shall be within 60 days of acceptance by Kotoznoowoo, whether following the Secretary's offer or the conclusion of arbitration."

ANALYSIS:

This provision mandates the acquisition of the commercial timber rights and the mineral rights of Kootznoowoo, Incorporated on 3,500 acres on Admiralty Island in proximity to the city of Angoon, subject to reservations of use for local, non-commercial purposes. The acquisition would effectively foreclose the possibility of commercial developement of timber or mineral resources on these lands.

The acquisition is mandated to be accomplished by exchange, including specific Congressional direction with respect to the land and interests to be acquired, the schedule and process to be followed and the pool of lands in Southeast Alaska from which exchange lands are to be drawn.

While the pool of federal lands from which exchange lands are to be drawn is specified, the actual lands to be exchanged are not specified, pending the determination of equal value between the parties based on market data, negotiation and arbitration, if necessary.

Details with respect to the pool of federal lands are supplied in maps submitted to the Committee, but may generally be characterized as small recreational tracts scattered throughout Southeast Alaska, and having no economic value for timber harvest. The tracts included in the amendment have been subjected to review by the State of Alaska, and a letter indicating the State's lack of objection to the tracts, and support for the exchange, has been submitted for the record.

The practical effect of this acquisition would be to complete the process of federal acquisition of private tracts on Admiralty Island capable of large scale commercial development, where that development has not been previously authorized, as is the case with the Green's Creek Mine. The timber rights acquired by the federal government in this exchange would be retained by the United States, and not harvested except in accordance with section 503(d) of ANILCA.

1730M

PROPOSED LANCASTER COVE-KITKUN BAY SELECTION CONSOLIDATION AMENDMENT

( ) Section 506(a)(5) of the Act (ANILCA) is hereby amended by adding at the end thereof the following new subparagraph:

(C) If such sale is voluntarily terminated, or is cancelled or forfeited in accordance with applicable laws and regulations, for one year after such termination, cancellation, or forfeiture all lands within the sale area and lands between such sale area and lands lying to the east of such sale area which have been or may be conveyed to Kootznoowoo pursuant to this paragraph (5), shall be made available to Kootznoowoo, Incorporated, for exchange, on the basis of equal timber and other property values and other terms mutually agreeable to the Secretary of Agriculture and Kootznoowoo, Incorporated, for lands previously selected by or conveyed to Kootznoowoo, Incorporated, pursuant to this paragraph (5).

ANALYSIS:

Under section 506(a)(5) of ANILCA, Kootznoowoo's land selections on Prince of Wales Island were subject to, and limited by, an existing Forest Service timber contract in Lancaster Cove-Kitkun Bay. If this sale is cancelled, Kootznoowoo would be allowed to exchange, on an acre-for-acre basis, any of its lands conveyed under section 506(a)(5) for lands within the sale area. Koootznoowoo's holdings would be further rationalized by a provision authorizing it to exchange, on an acre-for-acre basis, its existing entitlements on Prince of Wales Island for lands which lie in a narrow unselected area between the Lancaster Cove-Kitkun Bay Timber Sale and Kootznoowoo's existing holdings in the Dolomi Tract area.

This amendment would effectively permit Kootznoowoo to further reduce pressure for development of its corporate assets on Admiralty Island. In addition, land management opportunities for both Kootznoowoo and the Forest Service will be improved by consolidation of scattered land selections in a contiguous tract.

PROPOSED KOOTZNOOWOO LAND TRANSFER DATE AMENDMENT

( ) TRANSFERS. Lands transferred, exchanged, or granted pursuant to section 506(a)(2) of the Act (ANILCA) shall be deemed to have been transferred, exchanged, or granted as of December 31, 1979: Provided, That this effective date shall not be construed in any way so as to obligate any payments by the United States, or as to require the escrow of any funds which may have been generated on such lands prior to December 2, 1980.

ANALYSIS:

Due to the lengthy background of conflict surrounding Admiralty Island land selections under ANCSA, Kootznoowoo received conveyance of its land selections both substantially later than other Native corporations and on a variety of different dates. These later conveyances were made necessary by resolution of significant environmental concerns, but create substantial accounting and management difficulties for Kootznoowoo.

This provision would unify the various conveyance dates into a single date which would be the same as the conveyance date for other Southeastern Native corporations. This will result in significant accounting and management benefits for Kootznoowoo, and facilitiate cooperative management of Native corporate assets in the future, due to common land tenure and title basis.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

RECEIVED

Kootznoowoo, Inc.

June 27, 1986

Mr. Ivan P. Gamble, President
Kootznoowoo, Inc.
P.O. Box 116
Angoon, AK 99820

Dear Mr. Gamble:

I appreciate your providing the state with the opportunity to review the properties currently under consideration for exchange with the Forest Service for Kootznoowoo land on Admiralty Island, and your working with us to modify your proposal. The state supports an off-Admiralty exchange.

The properties you propose to be included in the exchange package were reviewed in light of their impact on state land and on state selected lands. As a result of this review, the Department has no objection to the exchange of parcels selected from the areas that were agreed to at the meeting between my Southeast Regional Office and your representative on June 23, 1986. We offer the following specific comments on each of the properties, presented here according to the numerical system you provided.

Sitka

S-1 Camp Coogan Bay

The state relinquished a selection in this same area and we have since concentrated our land disposal efforts on Middle Island. The area is used by Sitka residents for hunting, fishing, and other recreational uses. We have no objection to this exchange proposal.

S-2 Siginaka Islands
S-3 Southeast end of Krestof Island

The Siginaka group of islands and portions of Krestof Island are located north and northwest of state selections at Little and Big Gavanski and Middle Island. The islands are heavily used by boaters because they afford good anchorage and quick weekend retreats. An exchange between the Forest Service and the native corporation would not interfere with state land or state selections in the area.

Juneau

J-1 Douglas Island

The state selection along Gastineau Channel and around the southeast end of the island is within one quarter of a mile of your proposal. We do not object to this proposal.

J-2 Mansfield Peninsula

Horse Island is the nearest state selection to the areas identified on the Mansfield Peninsula. Horse Island was selected in lieu of adjacent lands on the Mansfield Peninsula because the mainland is heavily hunted by Juneau residents. There may be several Forest Service permittees along the eastern shore. In relation to existing or future state selections, the state has no objections to the proposals.

J-3 Shelter Island

State selections border on the north and south end of your proposal. To the south is a state subdivision and to the north is a legislatively established marine park. Since Shelter Lake and the cove accessing the lake are not included in your proposal, the state has no objection.

J-5 Pleasant Island

This island is used by deer hunters from Gustavus. The mainland has no true deer populations. A state selection was considered but the selection was dropped because of the deer hunting of local residents. The area does not conflict with existing or proposed state selections.

J-6 Porpoise Islands

Adjacent to Pleasant Island, this area affords some protection for boaters in an area where little protection exists. This area does not conflict with existing state selections.

J-7 Couverden Point

Couverden Island as well as Ansley and Entrance Islands are included in a state selection which is tied up in the Alaska vs. Block lawsuit. We do not object to your proposal which identifies areas on the mainland north of the state selection.

J-8 Eagle River

An area of state land is located near the northern end. South of your proposal is the Eagle River picnic area, managed by the Forest Service. The area you have identified appears to be beyond the viewshed of this recreation area. The state has no objection to the proposal.

J-9 Hawk Inlet

A state Group III selection (scheduled to be reconsidered prior to 1994) is north of your proposal and we see no conflict with our selection proposal.

J-10 St. James Bay

This area is outside of the state marine park. We have no objection to the proposal.

Ketchikan

K-1 North Point Higgins Coast Guard Base

As pointed out in the meeting of June 11, 1986, it is likely that the Cook Inlet Regional Corporation has filed a selection on this land. Should it become available, the state has no objection to its inclusion in the exchange.

K-2 Betton Island and Back Island

The U.S. Navy is planning on using some or all of Back Island for a submarine testing base. The state has a selection on the south end of Betton Island, but no conflicts were noted along the northern shoreline.

K-3 Seal Cove
K-4 Nahenta Bay

Both areas are located on the southern end of Gravina Island and are near the state selection at Dall Head. Dall Head offers recreational use and possibly some settlement potential. Your proposals would not conflict with the state selection.

I hope that our review has been useful for you. If I can provide you with any additional information feel free to contact me.

Sincerely,

Esther C Wunnicke
Esther C. Wunnicke
Commissioner

Attachment

cc: Guy Martin
Tom Hawkins
Paula Burgess

Revised 6/24/86

KOOTZNOOWOO, INC. LAND EXCHANGE

1. No Thorofare Bay (S-1)
2. Siginaka Islands (S-2)
3. Southeast End of Krestof Island (S-3)
4. Douglas Island (J-1)
5. Mansfield Peninsula (Barlow Cove & Piling Point) (J-2)
6. Shelter Island (J-3)
7. Pleasant Island (J-5)
8. Porpoise Islands (J-6)
9. Couverden Point (J-7)
10. Eagle River (J-8)
11. Hawk Inlet (J-9)
12. St. James Point (J-10)
13. North Point Higgins Coast Guard Base (K-1)
14. Betton Island and Back Island (K-2)
15. Seal Cove (K-3)
16. Nahenia Bay (K-4)

1680M

TESTIMONY OF MATTHEW J. FRED, SR.
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS OF THE
HOUSE COMMITTEE ON INTERIOR & INSULAR AFFAIRS
ON
H.R. 4833
THE ADMIRALTY ISLAND EXCHANGE ACT

June 6, 1986

Mr. Chairman, members of the Subcommittee, my name is Matthew J. Fred, Sr. and I have three Tlingit names of former cultural chiefs: L'aan-goos-oo, Tl'aa-di-xee and Na-hoo-woo. I am the hereditary traditional head cultural leader for Angoon and Admiralty Island.

Today marks the first time since the passage of ANSCA that Elders from two neighboring Tlingit tribes who are closely knit in cultural relationship, but who became involved in litigation over traditional land, sit in agreement. Ours is a matrilineal society -- we follow the lineage of our mothers. Therefore, we can be closely related, but not of the same clan, or even village. Ted Borbridge is my tribal brother. His father and my father come from the same tribal house in Angoon, Noo'w hit (fort house). Mark Jacobs, Jr., whose grandfather, John Paul (Kaa-tlane) is my maternal uncle. The same holds true for Alfred Perkins through John Paul again. Also, Andy Hope III's grandparents (of a certain household) are my grandparents.

These two Elders sitting with me became hereditary cultural leaders through the society ranking of their grandparents.

Grandparents are treated with high respect. They can refer to me as their Outer Shell. Words and activities are chosen in this relationship not to crack the Outer Shell.

This story can go on and on, reminding us, with sorrow, that for the sake of the survival of the corporation, we momentarily forgot our origin.

In recent years, we have taken part in important potlatches, one with another. There was something dramatically missing. The ancient tribal agreement of eating out of the dish and not breaking it was forgotten. We were merely going through the motions, the actions, and the sacredness of the cultural rituals that can only be achieved by traditional respect, and brotherhood and faithfulness to our origins. We find that we cannot live without harmony.

Now we find our wounds healing through negotiations as was done in the past in the Tlingit Nation. We find ourselves in the realization that we cannot get along without each other, without the sacred meaning of brotherly love through maternal and parental relation. We find that the love we had for one another is being restored to the point that we are beginning to feel the high emotion of love that we once had. The work this Committee is doing, we are sharing, and it is of comfort.

In closing, Mr. Chairman and Members of the Committee, I ask you to join the Tlingits of Angoon and Sitka in continuing to work toward a comprehensive and complete settlement of the Admiralty Island problems. In the past, we have settled our problems among ourselves. This time, we need your help.

1850M

Senator MURKOWSKI. Thank you very much, Mr. Gamble.

Our next witness is Mr. Sterling Bolima. Please proceed. Just move the microphone over a little bit.

Mr. BOLIMA. Mr. Chairman, I am just here accompanying Ivan Gamble. I will not be giving any testimony today.

Senator MURKOWSKI. Thank you.

Alvin Edenshaw, general manager of the Haida Corp., Hydaburg.

STATEMENT OF ALVIN EDENSHAW, JR., VICE PRESIDENT, HAIDA CORP.

Mr. EDENSHAW. Mr. Chairman, my name is Alvin Edenshaw, and I am vice president of Haida Corp. Along with me, I brought three members of our village which are sitting directly behind me.

I have come before you today to ask for your assistance. Without it, we the Haida people will almost certainly lose our land. Without our land, we are nothing.

On May 15, 1985, Haida Corp. was forced to file for bankruptcy under chapter 11. The court has given us until December 31 of this year to file a plan of reorganization.

Under ANCSA, Haida Corp. received the least valuable lands of all the southeast Alaska Native villages. This is so despite the fact that the Haida people of Alaska were historically among the richest of all Indian tribes. Our traditional lands included some of the most valuable timber lands in the world.

We like many other villages experienced long delays in the reconveyance of our lands. This made even our best timber lands virtually worthless, because of the downturn in the market.

We are the only southeast village where the two-core township rule has been enforced. The application of this rule denies us any choice in the lands we could select.

We still have 2,309 acres left to select. We hope we will not have to take them from our core townships. The remaining land available from those townships has either no merchantable timber or is made up of muskeg, mountain tops, or low-quality timber.

Haida Corp. attempted to accomplish an administrative land exchange with the Forest Service for 3 years. Our efforts were unsuccessful. They were painfully drawn out and expensive.

We have been involved this year in extensive discussions with the Forest Service, the timber industry, the local government, the State of Alaska, other Native corporations, the Department of the Interior, the local and national conservationist groups in an attempt to solve our problem with legislation in a way which would be acceptable and beneficial to others.

We believe we are making progress. We are especially encouraged with respect to a timber credit proposal under which the Government could acquire certain Haida lands in exchange for timber credits which could be used for bidding on national forest timber sales. We hope to introduce legislation shortly which can be of benefit not only to Haida Corp., but to the tourism, timber, and fishing industries of southeast Alaska.

We need our lands to save our heritage and our future. We undoubtedly have made mistakes. But we have new and concerned leadership and have taken meaningful steps to correct our past errors. We would be most grateful for the committee's consideration of our forthcoming proposal.

Thank you.

[The prepared statement of Mr. Edenshaw follows:]

WRITTEN STATEMENT OF ALVIN EDENSHAW, JR.
VICE-PRESIDENT OF HAIDA CORPORATION

before the Senate Energy and Natural Resources
Subcommittee on Public Lands, Reserved Water
and Resource Conservation

August 4, 1986

Mr. Chairman and Members of the Subcommittee:

My name is Alvin Edenshaw, Jr. and I am Vice-President of Haida Corporation. I want to thank you for the opportunity to present testimony before your Committee today. Haida Corporation is the ANCSA village corporation for the village of Hydaburg, on Prince of Wales Island in Southeast Alaska. I have been an officer of the corporation for approximately seven months, and a member of the Board of Directors for three years.

I have come before you today to ask for your assistance. Without it, we, the Haida people, will almost certainly lose our land. Without our land, we have nothing.

On May 15, 1985, Haida Corporation was forced to file a petition for protection from its creditors in the United States Bankruptcy Court in the District of Alaska. The Court has given us until December 31 of this year to file a plan of reorganization. One creditor presently claims a security interest and the right to foreclose on every acre of land, stick of timber and asset that we have. The deed of trust in question was signed without the approval of the Board of Directors or the shareholders. In fact, most of our people knew nothing about the pledge until we were forced to file for bankruptcy. But even if that alleged security interest is declared invalid, the bankruptcy trustee will just take our land to public auction, unless something can be done.

Under ANCSA, Haida Corporation received the least valuable lands of all the Southeast Alaska Native villages. This is so despite the fact that the Haida people of Alaska were historically among the richest of all Indian tribes. Our traditional lands included some of the most valuable timber lands in the world. But under ANCSA the lands we were forced to take have little good timber. Much of what we received instead was not good timber, but was sensitive habitat like salmon-spawning streams, estuaries and many eagle trees. We respect these things. But it is hard land to develop. And the bankruptcy trustee will protect none of these things. Thus, although some of the lands we received are good for subsistance and some are picturesque, they are of little commercial value.

We, like many other villages, experienced long delays in the conveyance of our lands. This made even our best timber lands virtually worthless, because of the downturn in the market.

We are the only Southeastern village where the 2-core township rule has been enforced. The application of this rule denied us any choice in the lands we could select. This rule, which is set forth in Section 16(b) of ANCSA, provides that a village corporation must first take its land entitlement from its "core" township or townships, and then it can look to the circle of surrounding townships to satisfy the remainder of its entitlement. A core township is one in which the village is actually located. Most villages do not happen to straddle a township line, and thus in Southeast they have a circle of eight surrounding townships in addition to their core township from which to select their entitlement. By chance, the actual village of Hydaburg straddles a township survey line. This was interpreted to mean that it has two "core" townships, and because it can satisfy its entitlement out of these two, it could not look to the ring of surrounding townships for its selections. The only other villages that were stuck with two-core townships were up North where they had much larger acreage entitlements (of at least 69,120 acres) so they still had a choice after satisfying the core rule.

We still have 2309 acres left to select. We hope we will not have to take them from our "core" townships. The remaining land available from those townships has either no merchantable timber, or is made up of muskeg, mountain tops, or low quality timber. Moreover it is inaccessable from Haida Corporation's present lands. The feasibility of road building to access any of these areas is cost prohibitive and physically impossible. The areas are adjoined by land of Forest Service management on one whole side.

Hydaburg extends into its second "core" township by only some 200 feet to the west. Moreover, some of the Department of Interior geodetic surveying stations have been determined to be off by as much as 300 feet in this part of Alaska. But this line has meant everything in terms of what Haida could select. The surrounding ring of townships we could have otherwise picked from contains very, very valuable timber land.

Haida Corporation attempted to accomplish an administrative land exchange with the Forest Service for three years. Our efforts were unsuccessful. They were painfully drawn out and expensive. In addition those three years cost us a lot in lost time because of the bankruptcy court deadlines.

We have been involved this year in extensive discussions with the Forest Service, the timber industry, local government, the State of Alaska, other native corporations, the Department of Interior, and local and national conservation groups in an attempt to solve our problem with legislation in a way which would be acceptable and beneficial to others. We believe we are making progress. We are especially encouraged with respect to a timber credits proposal under which the Government would acquire certain Haida lands in exchange for timber credits which could be used for bidding on National Forest timber sales. We hope to introduce legislation shortly which can be of benefit not only to Haida Corporation, but to the tourism, timber and fishing industries of Southeastern Alaska.

We need our land to save our heritage, and our future. We undoubtedly have made mistakes. But we have new and concerned leadership, and have taken meaningful steps to correct our past errors. We would be most grateful for the Committee's consideration of our forthcoming proposal.

Senator MURKOWSKI. Thank you, Mr. Edenshaw.

I am going to depart briefly because I want to reflect on your testimony, and then I will proceed with the rest of the witnesses and get back to some questions.

You have a deadline on your current status of your corporation——

Mr. EDENSHAW. December 31.

Senator MURKOWSKI [continuing]. Which is in chapter 11, and unless something is done prior to that time, why you are going to be in a very difficult position. And these timber credits offer you an alternative.

I want you to be very much aware of the reality of the calendar that exists around here. I do not want to mislead you by any means. But that situation would have to be expedited dramatically in order to accommodate you.

The fact that you are here and the fact that timber credits have been discussed as a potential resolve, I think is meritorious. But your testimony didn't necessarily outline those that may be in objection or have an objection to your particular remedies that would have to be addressed.

If we are going to try and help you, we are almost going to have to have an identification of where any objections lay so that we could see what their objections may be. Now maybe it will just come from OMB or maybe it will just come from the Forest Service. Or maybe it will not come at all.

This is one case where I do not think the judge, unless we can come up with a new appeal for him, will grant more time. But you have legal counsel to take care of that. If you or your counsel or consultants can try to provide us with some kind of a scenario so that we can expedite the specific process or appeal to the judge, I would be willing to attempt to make every accommodation possible because I think yours is a unique case.

Obviously, the Admiralty Island situation isn't going to be resolved as quick as yours, as necessity dictates. The biggest problem we have, of course as you recognize, is that we do not have a piece of legislation. You have been given an opportunity to come in under the umbrella of S. 1330 and to suggest that we have got time to expedite a bill is probably unrealistic.

So I just wanted to be very honest and open with you and indicate the unusual predicament that you are in, and if we can assist in a stay, from the standpoint of the judge or whatever you would suggest, we would be happy to do it. OK?

Mr. EDENSHAW. Thank you.

Senator MURKOWSKI. I am sure we will hear more about the suggested cure-alls, but I did want to pass that on to you.

Mr. Theodore Borbridge, chairman of the board, Shee Atika.

STATEMENT OF THEODORE BORBRIDGE, CHAIRMAN OF THE BOARD, SHEE ATIKA, INC.

Mr. BORBRIDGE. Mr. Chairman, my name is Ted Borbridge, and I am chairman of the board of Shee Atika. I appreciate the opportunity to be here to present testimony on Senate bill 1330 that relates to mineral deposits on Greens Creek and Admiralty Island.

While primarily 1330 does not relate specifically to Shee Atika, there is a bill in the House, primarily H.R. 4883, which contain many of the provisions similar to those found in S. 1330 that relate to Shee Atika and its land holdings on Admiralty. Therefore, it is appropriate to address what had been considered in hearings on the House bill relating to Shee Atika in anticipation that S. 1330 may be amended to include Shee Atika's land holdings on Admiralty Island.

As a brief background, Shee Atika received, pursuant to the Alaska Native Claims Settlement Act, approximately 23,000 acres on Admiralty Island. Since receipt of its lands, Shee Atika had been subject to unrelenting litigation by the Sierra Club and others to preclude it from developing those lands.

H.R. 4883 would offer to Shee Atika the opportunity to exchange its holdings on Admiralty Island for lands and other benefits. Since H.R. 4883 currently is pending markup before the Subcommittee on Public Lands of the House Committee on Interior and Insular Affairs, it is impossible for me to address specifics of H.R. 4883 without my comments perhaps becoming outdated as soon as the markup occurs.

As Shee Atika testified in hearings on H.R. 4883, the basic condition for any exchange to be acceptable to Shee Atika is one of equal value. The components of such an exchange, selected from the various options presented to the House subcommittee would include, as a minimum, the following:

One, the forgiveness of BIA loan indebtedness and loan guarantees;

Payment from the Federal timber receipts of $28 million, $15 million the first year and $13 million in the second year;

Three, the receipt of approximately 11,000 acres of surface and subsurface estate on Baranof Island in an area north of Sitka with the construction of a road by the Forest Service of approximately 20 miles to provide access to the lands;

Receipt of 12,000 acres of surface and subsurface estate lands in Kuiu Island, in the Bay of Pillars area. The entire Value Comparison Unit in which those lands lie should be withdrawn and Shee Atika allowed to select its acreage in a contiguous and compact tract, to maximize economic potential and eliminate environmental concerns.

Senator MURKOWSKI. I would ask that you summarize your remaining remarks.

Mr. BORBRIDGE. Mr. Chairman, to summarize, we have been in litigation for a number of years over the Admiralty Islands selection, and the alternative that has been presented by the House in H.R. 4883, combined with S. 1330, would go a long ways to alleviating the major problems we have at this time.

[The prepared statement of Mr. Borbridge follows:]

STATEMENT OF THEODORE BORBRIDGE, CHAIRMAN OF THE BOARD OF SHEE ATIKA, INC., SUBMITTED TO THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON S. 1330

Mr. Chairman, my name is Theodore Borbridge, and I am Chairman of the Board of Shee Atika, Inc. I appreciate the opportunity to testify today in connection with the Subcommittee's consideration of S. 1330, a bill that relates to the mineral deposits at Green's Creek on Admiralty Island. While the provisions of S. 1330 do not directly affect Shee Atika, there is a bill in the House, H.R. 4883, which contains many provisions similar to those found in S. 1330, as well as provisions that relate specifically to Shee Atika, Inc., and its land holdings on Admiralty Island. Therefore, it is appropriate to address what has been considered in hearings on the House bill relating to Shee Atika, in anticipation that S. 1330 may be amended to include Shee Atika's land holdings on Admiralty Island.

As brief background, Shee Atika received, pursuant to the Alaska Native Claims Settlement Act, approximately 23,000 acres on Admiralty Island. Since receipt of its land, Shee Atika has been subject to unrelenting litigation by the Sierra Club and others to preclude it from developing those lands. H.R. 4883 would offer to Shee Atika the opportunity to exchange its holdings on Admiralty Island for lands and other benefits. Since

H.R. 4883 currently is pending markup before the Subcommittee on Public Lands of the House Committee on Interior and Insular Affairs, it is impossible for me to address the specifics of H.R. 4883 without my comments perhaps becoming outdated as soon as markup occurs.

As Shee Atika testified in hearings on H.R. 4883, the basic condition for any exchange to be acceptable to Shee Atika is one of equal value. The components of such an exchange, selected from the various options presented to the House Subcommittee would include, as a minimum, the following:

(1) Forgiveness of BIA loan indebtedness and loan guarantees;

(2) Payment from the federal timber receipts of $28 million, $15 million in the first year and $13 million in the second year;

(3) Receipt of approximately of 11,000 acres of surface and subsurface estate on Baranof Island, in an area north of Sitka, with the construction of a road by the Forest Service of approximately 20 miles to provide access to the lands;

(4) Receipt of approximately 12,100 acres of the surface and subsurface estate of lands on Kuiu Island, in the Bay of Pillars area. The entire Value Comparison Unit in which those lands lie should be withdrawn and Shee Atika allowed to select its acreage in a contiguous and compact tract, to maximize economic potential and eliminate environmental concerns;

(5) Receipt of an undivided 40 percent interest in the mineral estate in the Green's Creek area with the other 60 percent to be transferred to Sealaska.

(6) Provision restricting judicial challenges to actions taken by federal officers under the provisions of the Act as it effects Shee Aitka's exchange;

If these provisions are included, then the values exchanged would come close to being equal and acceptable to Shee Atika. Other alternatives also could be acceptable, in the proper combination. However, assembling a package of components that is acceptable to all interested parties is extremely difficult to achieve.

Mr. Chairman, I know this is not very helpful, but under the circumstances it is the best I can do. I thank you for the opportunity to testify.

SHEE ATIKA, INCORPORATED
P.O. BOX 1949
SITKA, ALASKA 99835
PHONE (907) 747-3539

August 15, 1986

Senator Frank Murkowski
Room 709
Senate Hart Office Building
Washington, D.C. 20510

Re: S. 1330

Dear Senator Murkowski:

This letter supplements the testimony as presented by Mr. Ted Borbridge, Chairman of the Board of Directors, Shee Atika, Incorporated, before the Senate Subcommittee on Public Lands, Reserved Waters and Resource Conservation of the Committee on Energy and Natural Resources on August 4, 1986, pertaining to S. 1330.

As Mr. Borbridge noted in his statement, House bill H. R. 4883, which contains provisions relating to Shee Atika, as well as provisions relating to Admiralty Island similar, in part, to those contained in S. 1330, had not yet been marked up by either the Subcommittee on Public Lands or the House Committee on Interior and Insular Affairs, and therefore his testimony concerning the provisions of that bill, as they related to Shee Atika, could be outdated after mark-up. The bill was marked up and passed by the House on Monday, August 11, 1986. As passed, the bill contains certain provisions which are unacceptable to Shee Atika. I understand the House also will take up and pass technical or perfecting amendments before adjournment.

Before I address the unacceptable provisions, however, I wish to address the comments made during your hearings on the value of the holdings of Shee Atika on Admiralty Island and those proposed to be exchanged with Shee Atika pursuant to the House bill.

Mr. Max Peterson, Chief of the United States Forest Service, testified before the Subcommittee that it was his opinion that Shee Atika's lands had a value of approximately $70 million and the components of the House bill (H. R. 4883) offered Shee Atika far in excess of an equal value exchange. Before this Subcommittee Mr. Peterson testified to a $70 million estimated value of Shee Atika's properties, but earlier, before a House Subcommittee hearing on the same issue, he testified to a value of approximately $87 million. I do not know the reason for the change. Nonetheless, there has been a longstanding disagreement between the parties as to respective values of the components under consideration to be offered to Shee Atika in exchange for its Admiralty Island interests. Most of this valuation discrepancy lies in the basis which the Forest Service has used to determine the value of the components.

It is an acknowledged fact that timber markets have slipped substantially since the time of Shee Atika's original appraisal of its Admiralty Island interests in 1979-1980. To account for this change in markets, and to provide a comparable basis for an exchange, Shee Atika management analyzed the Admiralty Island interest on the basis of current market rates, actual logging costs, and base line data determined during the inventory process originally used for evaluation of our Settlement Act properties. A similar process was used to evaluate the value of the proposed North Kuiu land selection area which Shee Atika advanced to the House Subcommittee in November of 1985 as a possible area of exchange. Because the timber volumes on our Admiralty lands are in an exess of 300% of those of the North Kuiu proposal (and the grade breakdown reflects a substantially higher log grade on Admiralty versus Kuiu), it was determined that even considering a 30,600-acre selection on North Kuiu as compared to the current 23,000-acre ownership on Admiralty, the value of the Admiralty Island timber interest was nine times greater than that of Kuiu. When considering H. R. 4883, as passed, which contains Bay of Pillars in lieu of North Kuiu, the value spread is even greater, because the amount of timber offered is far less than that of North Kuiu, the area will be more difficult to log, there are logging restraints imposed on the area to be conveyed, and the amount of acreage is less than half of the North Kuiu proposal.

Turning to the Baranof Island lands, the Forest Service apparently believes they have a value in excess of $24 million. It justifies this valuation on the basis of commercial and residential lot sales and assume market value based on liquidation of these properties on the open market. However, the Forest Service fails to realize that even if its lot sales value were appropriate (which it is not), it would take an excess of 10 years to liquidate all such properties and it would require a substantial outlay of cash immediately for internal development, survey, utility, roading and general legal issues prior to the first lot being sold on the market. Living in Sitka, and knowing the City and Borough standards for subdivision of lots within the Borough, we determined (with the aid of a civil engineer), that the approximate net present value of the Baranof Island lands is $5.1 million. Ironically, while the Forest Service values the Baranof lands by the sale of lots, it refuses to give due consideration to the very valuable recreational lot potential of the lands around Lake Florence, Peanut Lake and Lake Kathleen when valuing our Admiralty Island lands.

The Forest Service, when considering the values of other components of the bill, consistently refuses to consider the time value of money. The proposed road into the Baranof Island lands is offered to be built over a 12-year period. Therefore, access and full use of these properties can not be anticipated at a time earlier than 12 years into the future. Similarly, when considering the Green's Creek offer the Forest Service apparently believes that the potential revenues from this operation is a windfall. Shee Atika, using the best available information has determined the net present value of a 40% Green's Creek interest at approximately $2.08 million. This is based upon information provided by the former Noranda management. It indicates a cash flow of zero for the first ten years and a maximum cash flow of $4 million for the entire adjacent subsurface for the next 10-year period. Returning these values to net present value indicates a $2.08 million value of this estate for Shee Atika's 40% interest. Likewise, the $25 million cash component in the bill, to be received by Shee Atika over a two-year period, in fact represents a net present value of approximately $24.48 million.

When comparing all components of H. R. 4883 to a reasonable net present value of Shee Atika's Admiralty ownership, the base line economics indicate that the value of the components offered are less than the net present value of the Admiralty Island selection. However, now that H. R. 4883 has passed the House, Shee Atika will make an indepth analysis of the economics of the offer and determine its relative acceptability to the Corporation.

Turning to H. R. 4883, as passed by the House, the first major objection relates to the lands designated for exchange to Shee Atika from in and around the Bay of Pillars on Kuiu Island. The lands as designated on the map of the Committee and referenced in the legislation, Section 2(b)(2), are unacceptable for several reasons. The desired lands are designated on the enclosed map. First, the bill provides only for the conveyance of the surface estate and Shee Atika should also receive the subsurface estate. Next, you will see by a comparison of the desired lands with those provided for in H. R. 4883 that the ownership of the lands on the enclosed map are contiguous, thus precluding Shee Atika from the problems inherent in split ownership of its properties, and guaranteeing Shee Atika access, without unnecessary threat of litigation, from one piece of property to another, and to an available road system and log transfer facility. In addition, the lands encompass Kutlaku Lake, and ownership of lands surrounding that lake will be valuable to Shee Atika for other than purposes of the commercial harvest of timber.

Next, the House "adopted" map subjects all of the shoreline and all of the streams to a 300-foot easement (in the case of streams, 600 feet, 300 feet on either side), precluding any commercial harvesting of timber. I note first that you will not find anywhere in the record of the hearings, mark-up sessions or report on H. R. 4883 reference to the proposed lands being subject to such restrictions. The only easements considered were access easements, and Shee Atika objected to the nature of those. This easement is a gross diminution of value of the lands to be exchanged, a gross change from what Shee Atika indicated it would consider accepting, and an unwarranted interference in the conveyance of lands to a Native corporation, which lands are to be treated as Settlement Act lands. Ostensibly, this easement was imposed in order to protect the "fisheries," but if the lands were conveyed to Shee Atika any timbering operation would be subject to state forest practices, including state procedures designed to protect the fisheries. (A 300-foot shoreline easement along the bay is obviously a scenic easement, not a fisheries easement.) The lands currently held by Shee Atika on Admiralty Island are not subject to such an easement or restriction and proposed exchange lands should not be subject to such an easement or restriction.

The lands are subject to certain access and site easements, as provided by Section 10 of H. R. 4883. These easements are contrary to the provisions of the Alaska Native Claims Settlement Act and are in excess of any easements imposed on lands Shee Atika currently holds on North Admiralty Island. First, the easements are perpetual in nature, which means regardless of use, those easements will exist unless removed by Congress sometime in the future, an event that will not occur. In addition, the easements were selected by the Forest Service, without benefit of consultation with Shee Atika or without benefit of consultation from the state, as is the normal situation with respect to easements imposed on lands conveyed to Natives pursuant to the Settlement Act. The shoreline easements are linear, covering the entire shoreline, which is contrary to the provisions of the Settlement Act, which provides for easements at "periodic points" along major waterways. This is a rule of law imposed by Congress and confirmed by the District Court for Alaska. Finally, the site easements are ten acres in size, rather than the standard five acres imposed pursuant to the Settlement Act on other lands conveyed to Natives.

I next turn to the interest in the Green Creek's subsurface estate that would be conveyed to Shee Atika and Sealaska, should they accept the offer. As provided for in H. R. 4883, it is unacceptable because it requires that the conveyance must be made to a third entity, composed of Sealaska and Shee Atika. We understand that the owners of the Green Creek claims wish to have this provision incorporated in the legislation because it will make it more convenient or easier for the owners to deal with Sealaska and Shee Atika. As a matter of principle, it is unacceptable to attach a condition to a conveyance to a Native corporation at the request of a third party which has no interest in the lands merely because it would be convenient to that third party. It is onerous enough to have Congress impose conditions on lands conveyed to Natives in the public interest. It is unacceptable to impose conditions for the benefit of a third party whose interests are private and profit-making.

Finally, under the initial version of the House bill, the direct cash payment to Shee Atika was to be $15 million and Shee Atika was to continue harvesting on Admiralty until it earned a net of $10 million (or had cut a specified number of board fee, whichever occurred first). When the current version was under consideration and it was proposed to eliminate the $10 million cut and substitute an additional $10 million payment, SHee Atika pointed out this would be a net loss of $3 million to Shee Atika in the form of unrecovered sunk costs. Thus, we needed $28 million rather than $25 million. Our point went unheeded and we are offererd the "loss." This defect must be remedied.

I have only one copy of the map, and I enclose it with this letter. I am sending 25 copies of this letter to Mr. Bevinetto.

Thank you for this opportunity to comment on this important issue.

Sincerely,

Roger D. Snippen

Roger D. Snippen
President & C.E.O.

Senator Murkowski. Is that it, Mr. Borbridge?

Mr. Borbridge. Yes.

Senator Murkowski. Thank you very much.

We will proceed with Mr. Bob Loescher, senior vice president, resource management, Sealaska.

STATEMENT OF ROBERT W. LOESCHER, SENIOR VICE PRESIDENT, RESOURCE MANAGEMENT, SEALASKA CORP.

Mr. Loescher. Thank you, Mr. Chairman. My name is Robert W. Loescher. I am senior vice president, resource management, Sealaska Corp. Mr. Chairman, I greatly appreciate the opportunity to testify before this committee and I thank you and the other members of the subcommittee for their attention to this very important legislation.

I have a prepared statement to submit for the record which I would like to summarize.

Senator Murkowski. It will be entered in the record.

Mr. Loescher. During consideration of H.R. 2651 in the Senate you, Mr. Chairman, explained that the action on S. 1330 was held up to allow resolution of other resource management issues affecting Admiralty Island. Currently pending before the House is a bill that would accomplish such a settlement, H.R. 4883.

The purpose of 4883 is to provide an offer for Shee Atika, Sealaska, and Kootznoowoo, to voluntarily relinquish and convey to the United States certain lands and interest therein on Admiralty Island and to receive in exchange, therefor, lands and other valuable consideration.

The exchanges authorized in H.R. 4883 would achieve the objectives of that S. 1330 by allowing expanded mineral development in the Greens Creek area of Admiralty Island, which would be achieved by a cooperative agreement between the Greens Creek Joint Venture on the one hand, and Sealaska and Shee Atika, the subsurface owners, on the other hand.

At the same time, H.R. 4883 would solve other resource management problems plaguing Admiralty Island. The Shee Atika exchange would resolve a long-standing dispute between Shee Atika and the Sierra Club.

Several years of litigation has been conducted by environmental groups to block timbering operations by Shee Atika on Shee Atika's 23,000 acres of inholding on Admiralty Island. H.R. 4883 would enable the Native communities to put the problem behind them.

Sealaska wholeheartedly supports legislation to effect a comprehensive settlement of all resource management issues concerning Admiralty Island and recommends that H.R. 4883 be adopted in lieu of S. 1330.

H.R. 4883 was introduced by Congressman Young, Congressman Udall, and Congressman Seiberling on May 21, 1986, after nearly a year of intensive negotiation among interested parties. H.R. 4883 reflects a great deal of House committee staff work that included extensive consultation with the U.S. Forest Service as well as input from the parties involved in the negotiations preceding the bill's introduction.

The approach by H.R. 4883 reflects a policy decision to leave unaffected the dictates of section 705(a) of ANILCA and to leave unaffected those timber lands within the Tongass National Forest that are currently utilized to satisfy the commercial timber production goals of that act.

With respect to the exchange elements offered to Sealaska by H.R. 4883, the exchange is based on the principle of fair and equal value. In relinquishing its subsurface rights to the 23,000 acres inholding on Admiralty Island, Sealaska is giving up interests in lands of good mineral potential.

In conclusion, Sealaska firmly believes that the comprehensive legislation solution to the resource problems of Admiralty Island should be enacted and that H.R. 4883 reflects such a comprehensive solution. It is Sealaska's hope that H.R. 4883 will shortly be enacted by the House and referred to the Senate and that it will be favorably received by the Senate.

Much effort has been put into H.R. 4883 by all parties, and Sealaska is very appreciative of the generous efforts that have been made to bring about a comprehensive resolution of the resource issues affecting Admiralty Island.

Enactment of H.R. 4883 would benefit the national interest by fulfilling the promises of the Alaska Native Claims Settlement Act and ANILCA. We urge the Senate to receive H.R. 4883 favorably when it is referred from the House and to adopt the bill in lieu of Senate 1330.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Loescher follows:]

DRAFT

TESTIMONY OF ROBERT W. LOESCHER, SENIOR VICE PRESIDENT, RESOURCE MANAGEMENT, SEALASKA CORPORATION, JUNEAU, ALASKA

Re: S. 1330 "To Amend Section 504 of the Alaska
National Interest Lands Conservation Act
To Allow Expanded Mineral Exploration
of the Admiralty Island
National Monument in Alaska"

BEFORE: The Senate Committee on Energy and Natural Resources,
Subcommittee on Public Lands -- August 4, 1986

MR. CHAIRMAN:

My name is Robert W. Loescher, and I am Senior Vice President of Resource Management of the Sealaska Corporation. I am accompanied today by Mr. Chris McNeil, Jr., Senior Vice President and General Counsel, and by Joseph Chomski and John Griggs, counsel to Sealaska.

Sealaska is an Alaska Native Regional Corporation, founded pursuant to the Alaska Native Claims Settlement Act of 1971 to represent the Natives of Southeast Alaska and incorporated under the laws of the State of Alaska. Sealaska has almost 16,000 shareholders residing primarily within the area of the Tongass National Forest and in the Pacific Northwest. Mr. Chairman, I will testify today on S. 1330, which was introduced last year, and on current legislation pending before the House, H.R. 4883.

Mr. Chairman, I greatly appreciate the opportunity to testify before this Subcommittee, and I thank you and the other members of the Subcommittee for their attention to this very important legislation.

Legislation introduced in the last session of Congress, S. 1330 and H.R. 2651

S. 1330, and a companion bill, H.R. 2651, were introduced in both Houses of Congress on June 3, 1985. As introduced, S. 1330 would allow the holders of mineral claims within the Admiralty Island National Monument the right to explore such claims until December 31, 2020, and to obtain a patent to the minerals for valid discoveries under the mining laws of the United States for such claims. On November 7, 1985, hearings on H.R. 2651 were held before the House Public Lands Subcommittee, and on December 12, 1985, an amendment in the nature of a substitute was reported out by the House Interior and Insular Affairs Committee. As reported, H.R. 2651 extended existing unperfected mining claims in the Greens Creek area of Admiralty Island National Monument that otherwise would have expired on December 2, 1985 under section 504 of the Alaska National Interest Lands Conservation Act. H.R. 2651 passed the House on December 12 and was referred to the Senate. During consideration of H.R. 2651 in the Senate, Senator Murkowski, who along with Senator Stevens had sponsored S. 1330, explained that action on S. 1330 was held up to allow resolution of other resource management issues affecting Admiralty Island. Senator Murkowski explained that the purpose of H.R. 2651 was to maintain the status quo in order to permit negotiations to proceed in an attempt to arrive at a comprehensive settlement of all resource management issues concerning Admiralty Island. To quote Senator Murkowski:

> H.R. 2651 ... permits the Noranda Joint Venture to continue to hold and explore its unperfected mining claims in the Greens Creek area for an additional year. It does not, however, permit any additional claims to be perfected during this year. Consequently, the effect of the bill is to maintain the status quo as of December 1, 1985, as far as the Greens Creek deposit is concerned.

[illegible] Cong. Rec. S 18256 (daily digest December 19, 1985). H.R. 2651 passed the Senate on December 19, 1985, and was enacted as Public Law No. 99-235.

Enactment of Public Law No. 99-235 has achieved the goal of permitting continued negotiations on a comprehensive settlement of all resource management issues affecting Admiralty Island. Currently pending before the House is a bill that would accomplish such a settlement, H.R. 4883.

H.R. 4883

The purpose of H.R. 4883 is to provide an offer for Shee Atika, Inc., Sealaska Corporation, and Kootznoowoo, Inc., Alaska Native corporations, voluntarily to relinquish and convey to the United States certain lands and interest therein on Admiralty Island and to receive in exchange therefor, lands and other valuable consideration. Under H.R. 4883, Sealaska Corporation would exchange its 23,000 acre subsurface estate on Admiralty Island, the surface of which is owned by Shee Atika, Inc., for a sixty percent ownership of the subsurface of some 15,000 acres in the Greens Creek watershed. Shee Atika, Inc., would obtain a forty percent interest in the Greens Creek subsurface. The rights of the Native Corporations to the Greens Creek subsurface would be subject to the preexisting rights of the Greens Creek Joint Venture. The exchanges authorized by H.R. 4883 would achieve the objectives of S. 1330 by allowing expanded mineral development in the Greens Creek area of Admiralty Island, which would be achieved by a cooperative agreement between the Greens Creek Joint Venture on the one hand, and Sealaska and Shee Atika, the subsurface owners, on the other hand.

In addition to its 60% interest in the Greens Creek subsurface, Sealaska would be entitled to receive a lease from the Forest Service covering some 4,000 acres of surface rights in the Greens Creek area for the purposes of mining and milling. Sealaska Corporation would also get the subsurface estate to some 4,709 acres in the Hetta Inlet area and some additional subsurface to which Sealaska is entitled under an agreement dated April 11, 1979, which was ratified by section 506(b) of the Alaska National Interest Lands Conservation Act.

At the same time, H.R. 4883 would solve other resource management problems plaguing Admiralty Island. The bill would authorize Shee Atika to exchange its 23,000 acre surface estate, on which timbering operations are currently being conducted, for a 40% interest in the Greens Creek subsurface and for other elements of consideration intended to effect an approximately equal value exchange. These elements are: 11,400 acres on Baranof Island; an amount of land valuable for timber production on Kuiu Island; cancellation of loan indebtedness owed by Shee Atika to the Bureau of Indian Affairs; the construction by the Forest Service of a road to the Baranof Island lands; a cash payment in two installments totalling $15,000,000 and certain limited timber cutting rights on the existing Admiralty inholding.

The Shee Atika exchange would resolve a longstanding dispute between Shee Atika and the Sierra Club. Several years of litigation has been conducted by environmental groups to block timbering operations by Shee Atika on Shee Atika's 23,000 acre inholding on Admiralty Island. The litigation delayed the realization by Shee Atika of any economic benefit from the Alaska Native Claims Settlement Act, nearly bankrupted Shee Atika and caused a great deal of acrimony between the Native communities of Angoon and Sitka. H.R. 4883 would enable the Native communities to put the problem behind them.

Kootznoowoo, Inc., under the provisions of H.R. 4883, would be authorized to exchange its rights to cut timber on its 3,000 acre inholding on Admiralty Island for certain interests in other Southeast Alaska lands on an equal value basis. The equal value would be determined by agreement with the Secretary of Agriculture, or on the basis of arbitration if the parties cannot agree on the issue of value.

Hearings on H.R. 4883 were held by the House Subcommittee on Public Lands on June 6, 1986. At those hearings, Sealaska

Corporation tentatively accepted the exchange offered by H.R. 4883, and Sealaska suggested a number of technical corrections for consideration during the mark-up process. A copy of Sealaska's suggested technical changes is submitted herewith. The Greens Creek Joint Venture testified in favor of the legislation. Shee Atika and Kootznoowoo also supported the legislation, subject to certain suggested changes. Representatives of environmental groups opposed H.R. 4883.

Sealaska whole-heartedly supports legislation to effect a comprehensive settlement of all resource management issues concerning Admiralty Island, and recommends that H.R. 4883 be adopted in lieu of S. 1330. Sealaska's Chief Executive Officer, Byron Mallott, has said about H.R. 4883:

> This bill, if passed by Congress, will complete a major piece of unfinished business in the implementation of the Alaska Native Claims Settlement Act in Southeastern Alaska. Shee Atika, Inc., and the Native people of Sitka will finally be able to fully participate in the ANCSA settlement, and after long years of debilitating litigation and acrimony, the various interests concerned with the future of Admiralty Island will have achieved a reasonable and responsible accord.

H.R. 4883 was introduced by Congressmen Young, Udall and Seiberling on May 21, 1986, after nearly a year of intensive negotiation among interested parties, including the three Native corporations -- Sealaska, Shee Atika, and Kootznoowoo, representatives of the Greens Creek Joint Venture, and representatives of the Sierra Club and the Wilderness Society. H.R. 4883 reflects a great deal of House Committee Staff work that included extensive consultation with the U.S. Forest Service as well as input from the parties involved in the negotiations preceding the bill's introduction.

The approach taken by H.R. 4883 reflects a policy decision to leave unaffected the dictates of section 705(a) of the Alaska National Interest Lands Conservation Act and to leave unaffected those timber lands within the Tongass National Forest that are currently utilized to satisfy the commercial timber production goals of that Act. In the process of negotiations between the parties and the work done by the Staff of the House Committee on Interior and Insular Affairs, a wide range of alternatives was considered and rejected prior to arriving at the compromise reflected by H.R. 4883. Lands and interests in lands throughout Southeast Alaska were investigated for use in the exchanges, including lands currently used to achieve the goal of harvesting 450 million board feet of timber per year, and lands presently classified by the Forest Service for uses other than timber harvesting. Every effort was made to find elements of consideration for the exchanges authorized that would minimize the amount of cash needed to achieve equal value in the exchanges.

With respect to the exchange elements offered to Sealaska by H.R. 4883, the exchange is based on the principle of fair and equal value. In relinquishing its subsurface rights to the 23,000 acre inholding on Admiralty Island, Sealaska is giving up interests in lands of good mineral potential. Published studies of the U.S. Bureau of Mines, the U.S. Geological Survey, and the U.S. Forest Service have assessed Sealaska's subsurface as valuable for mineral potential. For example, the formation of economic interest in the Greens Creek area, the Cannery formation, also occurs in Sealaska's subsurface. The Cannery formation displays proven reserves of silver, barite, lead, zinc and gold, and the subsurface now owned by Sealaska has good potential for those minerals. There is an existing claim by the Pyrola Group that has been examined and determined to contain three valid "core claims" under section 504 of ANILCA. The

Pyrola claims lie immediately to the north of the Sealaska subsurface, and the mineralization evident in the Pyrola claims extends into the Sealaska subsurface estate. In addition, copper veins have been traced from the south of the Sealaska subsurface into the rock outcroppings on the south shore of Lake Kathleen within the Sealaska subsurface, and geochemical sampling of reddish bogs in the Sealaska inholding confirm the existence of sulfide occurrences in the Sealaska subsurface. A memorandum reviewing the mineral potential of the Sealaska subsurface, titled "Cube Cove Mineral Potential," is being submitted for the record.

Because Sealaska would receive only 60% of the Greens Creek subsurface under H.R. 4883, additional consideration is necessary to produce equal value. H.R. 4883 would provide Sealaska an additional 4,709 acres of subsurface in the Hetta Inlet area. This subsurface is adjacent to selections of the Haida Corporation to which Sealaska owns the subsurface, and reflects the continuation of a mineral trend indicated in the Sealaska subsurface at that location. The U.S. Forest Service has objected to the creation of split estates, which refers to less than complete fee ownership by the United States. Sealaska would be willing to resolve the Forest Service's concern by allowing Sealaska to select the surface overlying the 4,709 acres of subsurface, and deducting that surface acreage from Sealaska's entitlement for further selections under section 14(h)(8) of ANCSA.

The subsurface estate to be conveyed to Sealaska at Hobart Bay, Port Houghten, and Echo Cove does not constitute additional elements of consideration for the exchange. Rather, this provision of H.R. 4883 resolves an outstanding matter arising from the agreement dated April 11, 1979 between Sealaska Corporation, Goldbelt, Inc., and the United States. Sealaska is currently entitled to these subsurface lands, and clearing this matter up by legislation would avoid further administrative proceedings regarding the implementation of the April 11, 1979 agreement.

The surface lease of some 4,000 acres is part of the consideration for the exchange of Sealaska's subsurface rights and would be in lieu of a lease under section 504(f) of ANILCA. Because this lease is part of the consideration for the exchange, no rental would be payable by Sealaska for the lease. Terms and conditions for the lease set forth in section 9 of H.R. 4883 are designed to control the environmental impact of mineral development activities facilitated by the lease.

Conclusion

In conclusion, Sealaska firmly believes that the comprehensive legislative solution to the resource problems of Admiralty Island should be enacted, and that H.R. 4883 reflects such a comprehensive solution. It is Sealaska's hope that H.R. 4883 will shortly be enacted by the House and referred to the Senate, and that it will be favorably received by the Senate. Much effort has been put into H.R. 4883 by all parties, and Sealaska is very appreciative of the generous efforts that have been made to bring about a comprehensive resolution of the resource issues affecting Admiralty Island. Enactment of H.R. 4883 would benefit the national interest by fulfilling the promises of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. We urge the Senate to receive H.R. 4883 favorably when it is referred from the House, and to adopt H.R. 4883 in lieu of S. 1330.

Comments and Proposed Technical Corrections on H.R. 4883
August 4, 1986

1. § 1(b): Comment:

The purpose statement reflects no reference to Kootznoowoo, Inc.

2. § 2(a)(4): Comment:

The definition of "Cube Cove lands" covers lands obtained by Shee Atika nd Sealaska under section 506(c) of ANILCA and pursuant to a land exchange agreement dated October 17, 1985. The exchange agreement in question covers lands and interests at locations in addition to those at Cube Cove, and the rights and obligations of the parties related to these other matters are not affected by the legislation. Report language should reflect a lack of intent to affect the other matters under that agreement.

3. § 2(a)(5): Comment:

It is not the intent of Congress in this Act to alter the status of Shee Atika but rather to recognize it in its present existing corporate form as provided by the Alaska Native Claims Settlement Act (ANCSA). [1] Shee Atika is not a Village Corporation as that term is defined in Section 8(a) of the ANCSA and under Section 2(g) of that Act. Rather, Shee Atika is a corporation formed pursuant to Section 14(h)(3) of ANCSA and is subsequently defined as an Urban Corporation in Section 102(9) of the Alaska National Interest Lands Conservation Act (ANILCA). 2/ Therefore, in order to avoid any confusion and to be consistent in the use of the proper definition of "Shee Atika," the definition of "Shee Atika" should be amended as proposed.

---

[1] Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 688 (1971), 43 U.S.C. § 1601 *et seq*.

Proposed Change:

Section 2(a)(5) should be amended as follows:

> The term "Shee Atika" means Shee Atika, Incorporated, an Alaska Native Urban corporation representing the Natives of Sitka with respect to their land entitlements under section 14(h)(3) of the Settlement Act.

4. § 2(a)(9): Comment:

The definition of "subsurface estate" should be changed. H.R. 4883 is an exchange of property conveyed pursuant to ANCSA and, to the fullest extent practicable, the bill should be consistent with ANCSA. Under ANCSA, regional corporations were conveyed subsurface rights, and although it is not defined in ANCSA, there is ample judicial precedent defining the term "subsurface estate" as used in ANCSA. *Aleut Corp. v. Arctic Slope Regional Corp.*, 421 F. Supp. 862 (D. Ak. 1976), *aff'd sub*

2/ Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (1980).

nom.; Chugach Natives, Inc. v. Doyon, Ltd., 588 F.2d 723 (9th Cir. 1978).

Proposed Change:

To provide consistency with ANCSA and to avoid the potential for future litigation, we would recommend that the following definition be substituted:

> (9) The term "subsurface estate" shall have the same meaning in this Act as it has under the Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 86 Stat. 688.

5. § 3(3): Comment:

Part of the consideration offered to Shee Atika is an undivided 40% interest in the subsurface estate to the Greens Creek lands. This provision creates several problems. First, Shee Atika has not professed an interests in a long-term mining venture. Second, Sealaska has an agreement and a working relationship with the Greens Creek Joint Venture respecting development of mineral resources in the Greens Creek area. Adding a third party at this point would complicate existing relationships. Third, sharing of the Greens Creek subsurface creates problems with respect to the sharing of revenues generated by the mining project under Section 7(i) of ANCSA. Fourth, Shee Atika's interest in the subsurface creates accounting problems respecting the allocation of costs and gross revenues from any development of the subsurface.

Proposed Change:

In lieu of the language of § 3(3), H.R. 4883, Sealaska recommends the following:

> (3) An independent, non-participant royalty interest of two-fifths (40%) of any mineral royalty or royalties received by Sealaska Corporation under the terms of any existing or future agreement or contracts covering the Greens Creek subsurface estate, until such time as Shee Atika, Inc., has received total royalties of $ _________, upon which its royalty interest shall cease.

6. § 3(4): Comment:

Sealaska is recommending a change to section 5(b) that would make conveyance part of the acceptance process. We recommend a conforming amendment to delete the reference to conveyance in section 3(4). Additionally, provision should be made to require the BIA to file releases of liens associated with the BIA loans.

Proposed Change:

> (4) Acceptance by Shee Atika as provided in section 5 shall be deemed to constitute satisfaction of all principal and interest due on any outstanding loans to Shee Atika by the Bureau of Indian Affairs, and the Bureau of Indian Affairs shall promptly execute, and file appropriate releases in connection with the satisfaction of loans.

7. § 4(1): Comment:

As noted previously, sharing ownership of the Greens Creek subsurface with Shee Atika creates serious problems, and the purposes of the legislation can be accomplished by the royalty language recommended above. Consistent with the royalty approach, Sealaska would be the sole owner of the Greens Creek subsurface, and § 4(1) should be changed accordingly.

Proposed Change:

> (1) The Greens Creek Subsurface Lands, and a leasehold interest in the Greens Creek Surface Lands as provided in section 9.

8. § 4(2): Comment:

Sealaska will accept paragraph 2, as drafted; however, it proposed an alternative, as follows:

> (2) the Secretaries of Interior and Agriculture shall amend the Hydaburg and Hoonah withdrawal boundaries authorized under section 16 of the Settlement Act, which shall expand Sealaska Corporations right to select and receive a conveyance of fee title to 8,000 acres of land; such acreage shall be credited against Sealaska's entitlement under section 14(h)(8) of the Settlement Act.

9. § 4(3): Comment:

Pursuant to an exchange agreement dated April 11, 1979, which was ratified by § 506(b) of ANILCA, Goldbelt received 26,784 acres of surface estate and Sealaska received 17,546 acres of subsurface estate in the Hobart Bay/Port Houghton Block. Sealaska is still owed 2,072 acres of subsurface as a result of that exchange. Section 4(3) of H.R. 4883 would convey 7,166 acres of subsurface at Hobart Bay to Sealaska in partial consideration for Sealaska's relinquishment of 23,073 acres of subsurface at Cube Cove, and would put all of Goldbelt's subsurface under Sealaska ownership except for 2,072 acres. Combining the 2,072 acres with the 7,166 acres of section 4(3) produces a total of 9,238 acres, which is sufficient to account for all of the unconveyed subsurface estate beneath Goldbelt's Hobart Bay and Port Houghton selections:

Hobart Bay/Port Houghton Block

Goldbelt received	26,784 acres surface
Sealaska received	17,546 acres subsurface
Sealaska due	2,072 acres subsurface
H.R. 4883 conveys	7,166 acres subsurface
Sealaska due and H.R. 4883 totalled =	9,238 acres subsurface

To convey all federally-owned subsurface under Goldbelt's surface, Sealaska recommends deletion of the words "at Hobart Bay" from section 4(3).

Proposed Change:

> (3) Any federally-owned subsurface estate underlying lands conveyed to Goldbelt, Incorporated, pursuant to the exchange agreement dated April 11, 1979, ratified by section 506(b) of the Act.

10. § 5(b): Comment:

Acceptance deadlines for the offered exchanges are established for both Shee Atika and Sealaska. Shee Atika is given 120 days, while Sealaska is given only 90 days. In other respects, the acceptance provisions are identical. Sealaska is of the view that both corporations should be treated equally, and therefore requests a change to § 5(b)(2).

Additionally, section 5(a) requires the corporations to deliver to the Secretary a warranty deed, corporate resolutions and opinions of counsel acceptable to the Secretary. Since the conveyance of exchange lands will not occur until after the delivery of the warranty deeds by both corporations, it would appropriate to deliver the original deeds to an escrow agent. Section 15(b) contemplates the use of an escrow agent to facilitate the release of liens and encumbrances, and the same escrow process could be utilized with respect to the conveyances themselves. It is not critical that the corporate resolutions and opinions of counsel be handled through escrow, but the deeds should be as a matter of good practice.

Proposed Change:

> (1) SHEE ATIKA. -- No acceptance by Shee Atika pursuant to subsection (a) of this section shall be effective unless the documents described in each subsection are delivered to an escrow agent as may be utilized by the Secretary pursuant to section 15(b) on or before the one-hundred-twentieth day after the date of enactment of this Act, except to the extent that later date may be

> allowed by the Secretary pursuant to subsection (c) of this section.
>
> (2) SEALASKA. -- No acceptance by Sealaska pursuant to subsection (a) of this section shall be effective unless the documents described in such subsection are delivered to an escrow agent as may be utilized by the Secretary pursuant to section 15(b) on or before the one-hundred-twentieth day after the enactment of this Act, except to the extent a later day may be allowed by the Secretary pursuant to subsection (c) of this section.

11. § 6(a): Comment:

Under § 6(a), Shee Atika would be given the entire Greens Creek subsurface if Sealaska fails to accept the exchange offer. Sealaska is opposed to this provision. Sealaska has worked long and hard to obtain an exchange of its existing subsurface rights for the Greens Creek subsurface and has entered into agreements and business arrangements for that purpose. Shee Atika has no business relationship with the Greens Creek Joint Venture, and the Joint Venture has given no indication that it would be willing to substitute Shee Atika in Sealaska's shoes.

Furthermore, Shee Atika is given the option of proceeding with the exchange if Sealaska does not accept, but Sealaska does not have that option if Shee Atika does not accept. Both parties should have the option to proceed on their own so that the acceptances are truly voluntary. The Sealaska subsurface exchange is an equal value exchange that can stand on its own, as demonstrated by the mineral potential of Sealaska's Cube Cove subsurface. Attached hereto is a memorandum from Sealaska's resource staff describing the mineral potential of the Cube Cove subsurface.

Proposed Change:

Delete section 6 in its entirety. Alternatively, section 6(b) should be amended to read as follows:

> (b) ACCEPTANCE BY SEALASKA ONLY -- If, pursuant to section 5, Sealaska accepts the offer of section 4, but Shee Atika fails to accept the offer of section 3, then there shall be conveyed to Sealaska the entire undivided subsurface estate to the Greens Creek Subsurface Lands, and Sealaska shall not be entitled to accept the Hetta Inlet Subsurface Lands offered under section 4(2).

12. § 8(b): Comment:

Consistent with Alaska Native timbering rights for lands acquired under ANCSA, timber harvested by Shee Atika on exchanged lands can be exported without primary manufacture. This provision should also apply to any timber cut by Sealaska to facilitate mining under section 9. While Sealaska cannot harvest timber for sale purposes in the Greens Creek area, it will be necessary to cut some timber to allow mining and mineral development. If such timber is of export quality, Sealaska should be allowed to export it.

Proposed Change:

> (b) EXPORT. -- Timber harvested and sold pursuant to this section or section 9(3) may be exported outside the State of Alaska without primary manufacture.

13. § 9: Comment:

Section 9 establishes a comprehensive regulatory regime for mining activities at Greens Creek. Sealaska submits that the regulatory regime for Greens Creek would be simpler if it were deleted from the Admiralty Island National Monument in exchange for the nearly Young's Lake Area. As can be seen from the attached analysis, Greens Creek -- VCU 144 -- is substantially similar to Young's Lake -- VCU 133, and the substitution of Young's Lake for Greens Creek would not materially affect the size or the quality of the Admiralty island National Monument. In ANILCA, the Monument was defined by reference to acreages and maps, and amendatory maps could accomplish this change. Changes should also be made in the wilderness boundary designation to include Young's Lake.

Proposed Change:

Add a new section to the bill to swap VCU 144 for VCU 133:

> (a) The boundary of the existing Admiralty Island National Monument designated by section 503(b) of the Act is hereby revised to include those lands generally depicted on a map entitled "Admiralty Island National Monument -- Revised," dated June, 1986.

> (b) The boundary of the existing Admiralty Island National Monument Wilderness designated by section 703(a)(1) of the Act is hereby revised to include those lands generally depicted on a map entitled "Admiralty Island National Monument Wilderness -- Revised," dated June, 1986.

14. § 9(2): Comment:

In the exchange authorized by H.R. 4883, Sealaska would acquire the Greens Creek subsurface estate. Section 9(20 would require a plan of operations for the development of Sealaska's interests. "Plan of operations" is a term used in regulations related to the development of mineral rights acquired in federal lands under the General Mining Law. See 36 C.F.R. Part 228. Because Sealaska would own the Greens Creek subsurface estate, it is not appropriate that Sealaska be subject to such requirements. Use of the "plan of operations" language in the bill might, arguably, subject Sealaska to all of the regulatory requirements in 36 C.F.R. Part 228, a result inconsistent with Sealaska's ownership of the subsurface estate.

Sealaska would not object to abiding by existing regulations, 36 C.F.R § 251.15, for reserved mineral rights in conveyances to the United States. The existing regulations recognize a not uncommon situation in which the Forest Service ownes the surface and some private party ownes the subsurface. The surface lease provisions should not be used to expand the control that the Forest Service would otherwise have over Sealaska's subsurface estate.

Proposed Change:

Delete § 9(2) in its entirety.

15. § 9(3): Comment:

For the most part, Sealaska Corporation, upon acceptance, will own the subsurface estate to those lands in which it will have a leasehold interest in the surface estate. Where this occurs, it is inappropriate to include language which grants permission to use a resource (sand, rock and gravel) which Sealaska will own. There may, however, be some acreage of the leasehold surface estate which will be held by Sealaska in which it will not have the subsurface estate. In such a case, it is appropriate to include language granting permission by the subsurface estate owner, the federal government, to Sealaska to use this subsurface resource.

Proposed Change:

> Within the leasehold area, the lessee shall be allowed to harvest and sell timber required to be removed for mining and access-related activities, and to the extent that the lessee does not own the subsurface estate underlying the surface leasehold interest, the lessee shall have the right to utilize, without any charge, any rock, gravel, and common varieties of mineral materials found on the site for such activities. Where appropriate, [s]uch use shall be according to the terms of permits issued by the Secretary under existing regulations governing such uses generally on National Forest system lands, including

> payment of fees. No other commercial use of timber or other resources on the leasehold area shall be permitted.

16. § 9(4): Comment:

Subsection (4) allows public use of lands leased to Sealaska. Sealaska will be investing capital to make improvements on its leasehold, and will seek financing in financial markets for the improvements. The reservations retained in this subsection would deprive Sealaska of the right of quiet enjoyment of its leasehold and would impair its ability to secure private financing. As the lessee, Sealaska should have the right to control access and, if necessary, to collect fees or impose cost-sharing requirements for those who use its property.

Proposed Change:

Delete section 9(4) in its entirety, or substitute the following:

> (4) In any leases issued pursuant to this section, the Secretary shall reserve the right of access at reasonable times and places and upon reasonable notice to carry out government business. Lessee agrees to afford reasonable public access, on request, provided that the requested access would not pose a hazard to public safety or interfere with mining activities. Lessee may require payment of reasonable fees for use of or access to lessee's property.

17. § 10(b): Comment:

Section 10(b) provides a whole system of easements that are specified and reserved prior to the conveyance of the exchange lands. The approach reflected in § 10(b) addresses the problem prior to conveyancing and the fact that § 17(b) easements prior to conveyancing and the fact that § 17(b) of ANCSA has expired. While Sealaska does not object to an expeditious procedure for identifying easements and delineating them on maps prior to conveyance (as § 10(a) requires), the easements reserved should conform to the now-settled and accepted practice under § 17(b) of ANCSA. Streamside, marine shoreline and site easements under § 10(b) are all broader than § 17(b) of ANCSA easements, and in fact § 10(b) would allow these types of easements notwithstanding that the courts have ruled against this very type of easement under § 17(b) of ANCSA. Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Ak. 1977). Sealaska recommends changes to § 10(b) to conform to § 17(b) of ANCSA, which will still allow easements to be designated in advance pursuant to the standards applied to other ANCSA entitlements.

Additionally, reserved easements under H.R. 4853 include the right of the Secretary to utilize certain subsurface minerals, including rock and common varieties of minerals. This is inconsistent with Sealaska's subsurface estate and is inconsistent with practice under § 17(b) of ANCSA.

Proposed Change:

- Revise § 10(b) as follows:

> (1) Public easements shall be identified by the Secretary for actual or potential uses as reasonably necessary to guarantee a full right of public use of and access to adjacent

Federal lands for public recreation, hunting, transportation, docks, and other public uses.

(2) Delete

(3) Delete

(4) Delete

~~(5)~~ (2) Revise and ~~remember~~ renumber to read as follows: The owner of adjacent lands may use a reserved easement for access to that owner's lands.

(6) Delete

(7) Remember as (3); no other change.

18. § 16(b): Comment:

Subsection (b) states that the United States does not warrant title to lands listed under sections 3 and 4 of the bill. Clearly, the United States cannot disclaim any warranty of title to lands it conveys to Sealaska and Shee Atika. Section 16(b) as currently worded would create serious future title problems for Sealaska and Shee Atika.

Proposed Change:

Omit the words "title or":

(b) SCOPE OF OFFER. -- All lands listed in sections 3 and 4 are of approximate acreages

> and are subject to valid existing rights and to reservations as provided in this Act. The United States does not warrant acreages, nor shall Shee Atika or Sealaska have any rights under this Act other than expressly provided for in this Act.

19. § 17(a): Comment:

Subsection (a) amends Section 103 of ANILCA to prohibit future boundary changes of a national forest monument. This is unnecessary and may preclude minor, technical adjustments in the future.

Proposed Change:

Delete § 17(a).

20. § 15(b): Comment:

Suggested report language should apply to both Sections 7(b), Liens, and 15(b), Liens. Suggested language follows:

> Sections 7(b) and 15(b) both contemplate that certain liens, encumbrances, or third-party interests may have attached to the Cube Cove lands. Section 7 requires the Secretary to certify that there are no existing encumbrances, and Section 15 authorizes the Secretary to establish procedures, including utilization of an escrow agent, to assure that any encumbrances are removed prior to the exchange. It is anticipated that the

CUBE COVE MINERAL POTENTIAL

The Cube Cove lands have been evaluated for mineral potential by Sealaska. This evaluation includes the study of geologic and mineral reports of the U.S. Bureau of Mines, U.S. Geological Survey, U.S. Forest Service, unpublished company data from exploration firms and discussions with geotechnical personnel who worked in the field area.

The Cube Cove lands are located on the same geologic structure and formation that hosts the Greens Creek deposit. The formation of economic interest at both Greens Creek and Cube Cove is the Cannary Formation. The Cannary Formation has proven reserves of silver, barite, lead, zinc and gold in the Cube Cove area and silver, lead, zinc, copper and gold in the Greens Creek area.

In the Cube cove area above Lake Kathleen the Pyrola Group of mining claims has been examined and determined to contain three valid core claims. Additional examinations and expected validations are scheduled for 1986. To date the Pyrola Group has established validity to 1.44 million tons of massive sulfide ores.

The owners of the Pyrola Group have made geophysical, drilling and geological data available to Sealaska that trace the outcrops of mineralized argillites and phyllites into Sealaska's subsurface estate. The Pyrola claims adjoin and overlap the lands conveyed to Sealaska. The identified minerals include silver, lead, barite, zinc, copper and gold. The Pyrola owners have approached Sealaska in regards to joint development of the two properties.

Copper claims were staked at Square Cove adjacent to Cube Cove by Noranda Exploration and the copper veinwork has been traced into the rocks outcropping on the south shore of Lake Kathleen. The Lake Kathleen area above the lake has reddish bogs similar to the "Big Red Sore" that led to the Greens Creek discovery. Geochemical sampling of the bogs by the Pyrola owners and WGM Ltd. confirms anomalous sulfide minerals are present in the Sealaska subsurface.

WGM Ltd. an exploration firm that originally discovered the Greens Creek deposit for the Greens Creek Joint Venture has explored the land area in and around Sealaska's Cube Cove lands. Their 1970's exploration work indicates numerous massive sulfide occurrences exist in and adjacent to Sealaska's lands. WGM has mapped numerous geochemical anomalies and confirmed mineral occurrences by rock sampling. This data was made available for Sealaska's review. Their work confirms the continuation of the Greens Creek mineralization into the Cube Cove lands.

SELECTED REFERENCES CUBE COVE MINERAL POTENTIAL

Anaconda Copper 1980, Pyrola Project by Rick Van Niewenhuyse

A mineral and geologic report on the Pyrola Project.

Anaconda Copper 1980, Greens Creek Geology by Opal Adams and Rick Van Niewenhuyse

A geologic examination of the Greens Creek lithology and structure and comparisons to Pyrola Project to guide future drilling at Pyrola.

Presunka Geophysical Explorations Ltd. 1976, by S. Presunka and P. Presunka

A geophysical exploration of the Pyrola Project and delineation of mineral response trends.

W.G.Stevenson & Associates 1971, Exploration Report On The Pam And Pyrola Claims And Cyn Millsite Claims, Admiralty Island Alaska

A mineral and geologic examination of the Pyrola Claims and spectrographic analyses of mineral samples.

Report Of Mineral Examination U.S. Forest Service 1981, Pyrola #1,#2 and #3

A mineral examination of the Pyrola claims for validity determinations and eligibility for patent; three claims determined valid with 1.44 million tons of marketable ore.

U.S. Bureau of Mines.

Admiralty Island Mineral Locations, map and file 1983

Kardex quadrangle files Sitka, Juneau and Sumdum quadrangles

U.S. Geological Survey

Reconnaissance Geology of Admiralty Island, Alaska. Lathram et al, Bulletin 1181-R, 1965.

Metalliferous Lode Deposits of Alaska, Berg and Cobb, Bulletin 1246 1967.

REPORT OF MINERAL EXAMINATION

Claimant	Anaconda Copper Corp. Anaconda Building 555 17th Street Denver, Colorado 80217
Reason for Examination	A large part of Admiralty Island was declared a National Monument by Presidential Proclamation on December 1, 1978. As this withdrawal is subject to valid rights existing as of this date, examinations were made to determine if valid discoveries had been made prior to the segregation.
Lands Involved	Three mining claims as follows: Pyrola #1 Pyrola #2 Pyrola #3
Land Status	U.S. National Forest Monument
Mining District	Harris Mining District
Engineer	Wesley G. Moulton, USFS Juneau, Alaska

Summary

In 1967 Mr. Ray Renshaw staked mineral claims centered on a large outcrop parallel to Pyrola Creek and optioned them to Cyprus Mines Corporation. This company conducted geological mapping, and in 1968 put down two diamond drill core holes to test the subsurface. The property was then explored by Red Rock Mines Ltd., who held the claim until 1973. The claims have been idle until Anaconda acquired them in the summer of 1978.

Location and Access

The claims are located on Admiralty Island, twenty-eight miles south-southwest of Juneau, and seven miles northeasterly of Kathleen Lake. They are in the western 1/2 of the SW 1/4, Section 15, T45S, R67E, and a small portion of Section 23, T45S, R67E.

Access can be gained by foot trail from Kathleen Lake which is approximately seven miles southwesterly. Kathleen Lake, at an elevation of 473 feet is accessible by float plane. The easiest access to the property is by helicopter to a pad on the east side of Pyrola Gulch at an elevation of 2900 feet.

Geology

The rocks within the claim block have been classified by U.S. Geological Survey as part of the Cannary formation of Permian Age. This formation is described as a mixture of argillites, graywacke, chert limestone marble, and phyllite, several thousand feet thick.

The Cannary formation is underlain by the Retreat Group of Devonian Age. This group of rocks is composed of various types of schist, argillite, and marble.

A series of northwestern trending anticline, syncline, and related faults cross Admiralty Island. These formations could well be an extension of the formations that form the extremely high grade deposits of Greens Creek approximately six miles northwest.

History

Mr. Ray Renshaw, a local pilot (retired), first saw the brown stained zone on Pyrola Creek in 1954 while flying over the area. He subsequently visited this area on foot and, in 1967, located a block of mineral claims. Cyprus Mine Corporation obtained an option on these claims and during 1967 and 1968, conducted a geological mapping program and put down two diamond drill holes. The option was dropped in early 1969 and was picked up by Red Rock Mines in August. A program of geological mapping, geochemical sampling, and geochemical surveying was conducted over a part of the claim block during 1969 and 1970. In August and September, 1971, a total of 907 feet of diamond drilling was accomplished from two drillsites.

Mineralization and Valuation

The outcrop is exposed within the three claims in the form of an inverted V with the west leg dipping sharply westerly and the east leg dipping at a slight angle easterly. There is an exposure estimated at 1200 feet long and 50 feet wide in places. Samples taken from outcrops and from the drilling have been variable, but an estimated average is as follows:

Barite	35.71%
Silver	5.70 oz/ton
Zinc	2.20%
Lead	.75%

Using a rule of thumb in that an ore deposit will be equal in depth to 1/2 the strike lenghth and using a factor of 10 cu. ft. per ton, we find: $\frac{1200\ (\text{lenght}) \times 600\ (\text{depth}) \times 20'\ (\text{width})}{10}$ = 1,440,000 tons

While the outcrop and drilling shows widths up to 50 feet, I believe this will be lessened at depth so a 20 foot average is used. Using the values given we find that:

Silver @ 5.70 oz/ton = 5.70 oz ton
Barite @ 35.71% = .3571 x 2000 = 714.0 lbs./ton
Zinc @ 2.2% = .022 x 2000 = 44.0 lbs./ton
Lead @ 0.75% = .0075% x 2000 = 15.0 lbs./ton

Concentration recoveries are as follows:

Silver	85%
Barite	75%
Zinc	90%
Lead	85%

Gross Values per Ton of Ore

Silver 5.7 oz x $8.00 x .85 =$38.76
Barite $\frac{714 \times .75 \times 37}{2000}$ =$ 9.53

Zinc 44 x .30 x .90 = $11.88
Lead 15 x .30 x .85 = $ 3.83
$64.00

The previous values are based on prices as follows:

Silver	$ 8.00 per ounce
Barite	$37.00 per ton concentrate
Zinc	0.30 per pound
Lead	0.30 per pound

Estimated Costs

With the estimated small tonnage I believe that a small mining operation of not over 200 tons per day could be designed and operated at a profit. A road from Cube Cove to the property, a distance of approximately nine miles, would traverse land selected by Shee Atika. As this road will probably be used as a timber haul road, it will not be reclaimed. The cost estimate for the road was made by Mr. Robert Berryhill, engineer for the U.S. Forest Service. A dock would be constructed in Cube Cove for unloading equipment and loading concentrates for shipment.

The initial setup for the mine-mill complex including living quarters in estimated at $15,000 per daily ton. A summation of the above costs are as follows:

Road Construction	$1,180,000
Docking Site	$ 320,000
Mine-Mill Complex	$3,000,000
	$4,500,000

Based on a 1.44 MM ton deposit, the depletion cost will be $3.15 per ton.

Estimated costs for a 200 ton per day operation:

At 200 tons per day through put at the mill, the mine will produce on a five day week at 280 tons per day. The mill will work seven days per week at 200 tons per day. The estimated labor costs are as follows:

Mining - Labor	
Miners	4
Helpers	4
LHD Operators	2
Truck Drivers	4
General	2
	16

Assuming an average pay, including all fringe benefits at $150 per day per man, then cost per day is:

16 x 150 = $2400

On a daily tonnage:

2400 divided by 280 = $8.57 per ton

Concentrator Labor

Crusher Operator	1
Grinding Operator	4
Flotation Operator	4
Helpers	4
Tailings disposal	3
	16

Again assuming an average pay including fringe benefits of $150 per day per man based on 200 tons per day.

16 x 150 = $2400

2400 divided by 200 = $12 per ton through the mill

Support

Mechanics	3
Cook	2
Cook's Helper	3
General	2
	10

Basing the above on a seven day week at 200 tons/day ac $150 per man:

10 x 150 = 1500

1500 divided by 200 = $7.50 per ton

Supervision

Superintendent	$30,000/year
Mine Boss	24,000/year
Mill Boss	24,000/year
Chemist (pollution control)	20,000/year
	$98,000

Assuming fringe benefits at 50%, then total cost of supervision will be $148,000 per year or, at 70,000 tons per year, the cost per ton is $2.11.

Supplies:

Mill (reajents, balls, etc.)	$1.00/ton
Mine (powder, bits, etc.)	$1.00/ton

Transportation

Two concentrates will be recovered from the concentrator as follows:
Silver - zinc, lead 10 to 1 concentration = 20 tons/day
Barite 4 to 1 concentration = 50 tons/day

Concentrates would bag and laod silver, zinc, lead concentrates for shipment via barge to Seattle thence via truck to the smelter at Kellog Idaho (290 miles). Cost of barge is 24.25 per ton, while the cost to Kellog is $55.13 making a total haulage cost of $79.38 per ton of concentrate or $7.94 per ton of ore.

Barite will be bagged and sold FOB dock for use as drilling mud in the Cook Inlet area.

Pollution Control

Air pollution is not considered to be a problem. In an underground mine dust will be laid by water spray while nonpoisonous powder gasses will be vented to the outside.

Possible water pollution could occur if mine water and mill water were allowed to enter the streams feeding into Kathleen Lake. Arrangements will be made to check water daily and, if necessary, to treat the water to remove possible pollutants. Because of the small tonnages involved, a cost of $1.00 per ton will be added to cover such costs.

Reclamation

Reclamation, upon depletion of deposit, will consist of removal of buildings, fertilization and seeding of all disturbed areas. It is estimated that no more than 100 acres will be disturbed during the life of the mine. Costs are as follows:

Removal of Buildings	100,000
Fertilization and Seeding	
1. Fertilizer	
10-20-10 400#/acre at $16/cut	
100 x 4 x 16 =	$6,400
Urea 200#/acre @ 17.95/cut	
100 x 2 x 17.95 =	$3,590
Labor	
Assume 1 acre/man day at $150	
100 x 1 x 150	$15,000
Total	124,990

Based on a tonnage of 1.44 MM tons, this would add $0.09 per ton to costs.

Summary of costs per ton:

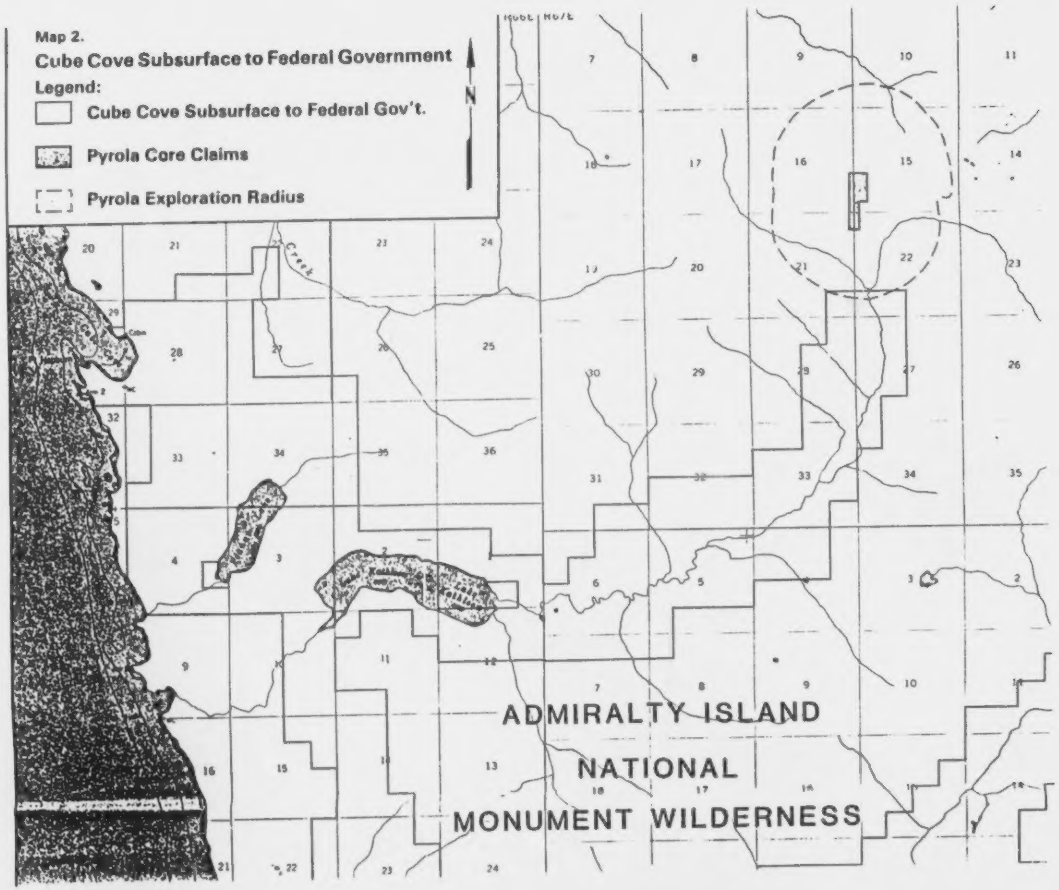
Mine labor	$ 8.57
Mill labor	12.00
Support labor	7.50
Supervision	2.11
Supplies	2.00
Depletion	3.15
Transportation	7.94
Pollution control	1.00
Reclamation	0.09
	$44.36

As the estimated recovery from the ore is $64.00 per ton and the total cost of recovery is $44.36 the resultant estimated profit is $19.64 per ton.

Conclusion

Based on the above estimates, I believe that a man of ordinary prudence would invest his time and money with a reasonable expectation of having a profitable mine.

Wesley G. Moulton
WESLEY G. MOULTON
Mining Engineer



Map 2.
Cube Cove Subsurface to Federal Government

Legend:
Cube Cove Subsurface to Federal Gov't.
Pyrola Core Claims
Pyrola Exploration Radius
N
R66E R67E
Creek
ADMIRALTY ISLAND
NATIONAL
MONUMENT WILDERNESS

March 26, 1986

MEMORANDUM

TO: Robert W. Loescher
Senior Vice President, Resource Management

FROM: Vincent A. Matt
Forest and Lands Manager

SUBJECT: Value Comparison Units 133 and 144:
U.S. Forest Service Land and Timber Statistics

The Tongass Land Management Plan (TLMP) provides the following data regarding Value Comparison Units (VCUs) 133 and 144:

	VCU 133		VCU 144	
Statistic	Acres	% of Total	Acres	% of Total
Land Class				
Commercial Forestland	9,887	54.4	11,174	64.9
Non-commercial Forestland	3,482	19.2	1,227	7.1
Non-forestland	4,804	26.4	4,823	28.0
Total	18,173	100.0	17,224	100.0
Commercial Forestland By Volume Class				
MBF/Acre				
Under 8	277	2.8	65	0.6
8-20	2,716	27.5	2,713	24.3
20-30	5,083	51.4	5,037	45.0
30-50	1,741	17.6	3,294	29.5
50+	70	0.7	65	0.6
Total	9,887	100.0	11,174	100.0

Although the TLMP data provides no specific estimates of total timber volumes within VCUs 133 and 144, the data indicates that VCU 133 and VCU 144 contain minimum volumes of 175 MMBF and 220 MMBF, respectively. Additional work would be needed to determine what

SEALASKA CORPORATION ONE Sealaska Plaza, Juneau, Alaska 99801-1276 Phone (907) 586-1512

portion of the volume in each VCU would be economically operable under current market conditions.

The present proposals calls for changing VCU 144 from its present LUD I (Monument Non-wilderness) classification to LUD III and changing VCU 133 from LUD III to LUD I (Monument Wilderness). The principal effects of these changes will be as follows: 1) These changes will result in a positive impact on the 4.5 billion-board-feet-per-decade harvest level, since a greater volume of timber will be added to allowable harvest timber base -- compared to the volume that will be lost, 2) a prime recreation area (Youngs Lake and its environs) will be added to the Admiralty Island National Monument wilderness and, 3) the total area of the Admiralty Island National Monument will be increased by approximately 950 acres; the area designated as national monument wilderness will be increased by over 18,000 acres.

VAM:mt

HETTA INLET ACQUISITION AREA

Sealaska Corporation has identified approximately 4,769 acres of subsurface estate for acquisition in the Hetta Inlet area. These potential acquisition lands adjoin lands owned by Sealaska that were conveyed through I.C. 225.

The acquisition lands have identified sulfide mineral potential. The potential minerals values were identified through a multi-year geologic exploration program conducted for Sealaska and are in an area with past mineral production. The identified mineral potential consists of copper and lead occurrences in Paleozoic mestasediments, i.e., slates, greywackes and conglomerates that have been intruded by dioritic stocks.

The land is moderately timbered in its lower slopes but is quite rugged topographically and in the higher region is bare rock and scrub vegetation.

Approximately 700 acres will come from VCU 673.1K and 2,800 acres from VCU 673.2K. There are no currently known mining claims, homesites or other public entry land conflicts in the VCU's that have not been identified and excluded from the acquisition description.

HETTA INLET

Section	Township	Range	Legal Description	Approx. Acres
31	76S	85E	All, excluding MS 649	364
32	76S	85E	All	455
6	77S	86E	All	533
7	77S	86E	All	609
18	77S	86E	All	610
19	77S	86E	All	612
30	77S	86E	N1/2	306
5	77S	86E	All	640
8	77S	86E	All	640
				=====
			Total	4,769

SURFACE LEASE AREA
(Unsurveyed)

Township	Range	Section	Legal Description	Approx. Acres
43S	65E	1	E1/2NE1/4	61
		26	All	640
		27	E1/2 - fractional	130
		35	W1/2W1/2	160
		36	W1/2	320
44S	65E	2	W1/2	234
44S	66E	2	N1/2, N1/2N1/2S1/2, S1/2NW1/4SW1/4	247
		3	N1/2S1/2, N1/2S1/2S1/2	240
		4	All	467
		5	All	467
		6	E1/2	233
		9	N1/2, excluding Big Sore #903-906, 1006, 1007 and 1305	195
43S 44S 44S	65E 65E 66E	}	Those segments of a mine road corridor (300 feet in width) outside of the subsurface exchange blocks identified for exchange to Sealaska extending from Youngs Bay from a point located within the NE1/4 of Section 1, Township 43 South, Range 65 East, thence running in a southwesterly direction for a distance of approximately three miles to a point in the NE1/4 of Section 15, Township 43 South, Range 65 East, thence in a southeasterly direction for a distance of approximately eight miles to a point located in the SE1/4 of Section 12, Township 44 South, Range 65 East, thence running in a northeasterly direction for a distance of approximately four miles to a point located within Section 4, Township 44 South, Range 66 East -- as shown in the Greens Creek January 1983 Environmental Impact Statement, pages 2-38, Figures 2-14, and those secondary road corridor segments (100 feet in width) as shown on Map 3 of this exchange proposal extending from the subsurface exchange blocks	

identified for exchange to Sealaska with the surface estate in and to certain strips of land 100 feet wide for use as a mining roadway and with 60 acres for appurtenant purposes, the roadway more particularly described as extending from the W1/2 of Section 36, T43S, R65E, C.R.M., near Greens Creek, Alaska and thence running in a northeasterly direction in Sections 36 and 25, T43S, R65E, C.R.M., Juneau Recording District, State of Alaska and these secondary road corridor segments (100 feet in width) as shown on Map 3 of this exchange proposal extending from the subsurface exchange blocks identified for exchange to Sealaska with the surface estate in and to certain strips of land 100 feet wide for use as a mining roadway and with 60 acres for appurtenant purposes, the roadway more particularly described as extending from the W1/2 of Section 36, T43S, R65E, C.R.M., northeasterly direction in Section 36, T43S, R65E, and Sections 31 and 30, T43S, R66E, C.R.M., Juneau Recording District, State of Alaska and those secondary road corridor segments (100 feet in width) as shown on Map 3 of this exchange proposal extending from the subsurface exchange blocks identified for exchange to Sealaska with the surface estate in and to certain strips of land 100 feet wide for use as a mining roadway and with 60 acres for appurtenant purposes, the roadway more particularly described as extending from the S1/2S1/2 of Section 3, T44S, R66E, C.R.M., thence running in a southeasterly direction in Sections 3, 10, 11, 14 and thence in a northwesterly direction in Section 14, T44S, R66E, C.R.M., Juneau Recording District, State of Alaska and those secondary road corridor segments (100 feet in width) as

shown on Map 3 of this exchange proposal extending from the subsurface exchange blocks identified for exchange to Sealaska with N1/2, Section 2, T44S, R66E, C.R.M., thence running in a northeasterly direction in Sections 35 and 36, T43S, R66E, C.R.M., Juneau Recording District, State of Alaska.	636
	=====
Total	4,030

All legal descriptions are based on the Copper River Meridian.

Senator MURKOWSKI. Thank you very much, Mr. Loescher. I will start with you, since your statement is freshest in my mind.

As we move with our enthusiasm to resolve a problem that has been around for a long time, we are faced with the realities that in House bill 4883 there is a reference to cash installments for Forest Service receipts and that figure has been bantered about to be $25 to $28 million. And we just heard from the Chief of the Forest Service saying $5 to $10 million.

Comment, please.

Mr. LOESCHER. Mr. Chairman, I was listening very intently to Mr. Peterson's statement. In the House he testified that the Government had recognized that the land and timber value was around $70 million and the total value to Shee Atika was around $84 million. So I was a little concerned about his change in values.

We have tried to put together a package that ranges between the $70 and $84 million range. The $25 million is very, very necessary to make the whole package work. And if we are able to get in the House tomorrow a balance in terms of the land—meaning that we would like to see Pillar Bay be included in lieu of North Kuiu—we think that the land, the money package, and all the other elements bring the total value to what Shee Atika expects.

Senator MURKOWSKI. Mr. Loescher, I do not dispute the total value. I am talking about the reality that here we have the Chief of the Forest Service who says he or someone else is going to have to object to anything over $5 to $10 million. In this kind of a climate I assure you, Mr. Loescher, that it will not be any higher than that. Where do we get the difference?

Mr. LOESCHER. Mr. Chairman, in working with the House, they explained to us that the Gramm-Rudman bill was very restricting, that we couldn't get appropriations, that we had to develop a bill that was as self-financing as possible. And you will see, Mr. Chairman, that the bill that we have in the House which will hopefully come to you has self-financing features.

Senator MURKOWSKI. Well, tell me, let's be specific now, are we talking about $25 to $28 million in the House bill.

Mr. LOESCHER. Yes, sir.

Senator MURKOWSKI. And we are talking about coming from Forest Service receipts?

Mr. LOESCHER. No, sir.

Senator MURKOWSKI. No, sir? OK. Well, why do not you enlighten me. Where is it coming from, the $25 to $28 million.

Mr. LOESCHER. OK, let me try to explain very, very carefully. It is not coming out of appropriations; it is coming out of what we would call a mini 705(a), where all the oil, gas, timber, receipts, and whatnot come to the United States——

Senator MURKOWSKI. To the Treasury Department.

Mr. LOESCHER. Yes, sir, that is correct.

Senator MURKOWSKI. OK. But we have just heard the Chief indicate that he could not support or defend more than $5 to $10 million. Now the House can pass it, but the OMB can stand as a witness and say no. And I am just telling you, it is going to be awfully hard in this climate to get a ruling that would overrule OMB's contention or contrary to the Chief of the Forest Service.

I am sure that you are action oriented like I am and you want to tell these people what is possible and what is unlikely. And in my opinion it is unlikely to expect $25 million from the Treasury when the Chief of the Forest Service who is going to speak on it is telling us what he can support. That is $5 to $10 million.

Mr. LOESCHER. Mr. Chairman, let me just try to put it in perspective. And I appreciate the Chief of the Forest Service's position. We have carefully tried to develop a bill within the resources that we have available to us: less dollars, a little bit more land, working with the mineral state to get a self-financing bill. I agree with you that $25 million may be difficult. But in order to make up the total package of value necessary to make an exchange with Shee Atika, the $25 million is a necessary ingredient.

So it becomes a public policy question to you and to the other Congressmen whether or not this mix of values is worth the while to make the land exchange with Shee Atika and Sealaska Corp. We think it is; we are prepared, with the Bay of Pillars, to accept such an offer from the U.S. Government.

Senator MURKOWSKI. Well, I think your point is well made. I do not disagree.

I do want to share with you the difficulty in communicating to some of my colleagues the fact that the will of Congress has not been done as far as Shee Atika is concerned. They keep saying, "Well, why hasn't it? Congress willed it." Well, obviously, they are not going to spend as much time as you and I on the background as to why this did not occur.

I am curious. As far as Kootznoowoo is concerned, the revenues generated from timber sales off of Prince of Wales amount to how much for Kootznoowoo?

Mr. LOESCHER. Mr. Chairman, are you talking about net or gross?

Senator MURKOWSKI. I beg your pardon?

Mr. LOESCHER. Net?

Senator MURKOWSKI. Oh, let's give them both, if you have got them both.

Mr. LOESCHER. We have producing somewhere—it varies by the year and stuff—around 10 million dollars' worth of timber. Most of that money is paid for getting the timber out of the woods, paying off our debt. And we still have not shown a profit on timber harvest.

Senator MURKOWSKI. You have not shown a profit on timber. So you have been losing money on the timber you have been cutting on Prince of Wales?

Mr. LOESCHER. Not losing money. We show an operating profit. But most of that money goes into paying off the startup costs.

Senator MURKOWSKI. Well, I know, but you amortize those over a period of time on your profit and loss statement and you either show a profit or you do not.

Mr. LOESCHER. Well, we show a small profit. I forgot what it was last year.

But as we amortize all these costs, as we pay for all the roads that we have built and everything, then our profits will go up.

Senator MURKOWSKI. Well, I assume you could not afford a log if you were not making money.

Mr. LOESCHER. That is right.

Senator MURKOWSKI. Because obviously you do not go into a venture to lose money.

Mr. LOESCHER. Well, we plan to spend 3 years just getting into the business.

Senator MURKOWSKI. How long have you been logging on Prince of Wales?

Mr. LOESCHER. Three years.

Senator MURKOWSKI. Three years. Do you present an annual statement to your shareholders of Kootznoowoo?

Mr. LOESCHER. Yes.

Senator MURKOWSKI. We would appreciate having this statement as part of the record.

Mr. LOESCHER. OK.[1]

Senator MURKOWSKI. I am wondering, Mr. Loescher, if you could tell me how much timber has been cut on Admiralty Island in the last 100 years.

Mr. LOESCHER. Mr. Chairman, I testified on that issue before you in November, and there were lands on southern Admiralty Island, oh, I would say maybe totally there are about 5,000 to 6,000 acres that have been cut on Glass Peninsula on the eastern side, some on the southern side by Taiee and whatnot; and then about a 1,000 acres is planned out of Shee Atika's current harvest.

Senator MURKOWSKI. Somewhere under 10?

Mr. LOESCHER. Somewhere under 10.

Senator MURKOWSKI. That goes back, what, quite a while, trap logs?

Mr. LOESCHER. Forty years.

Senator MURKOWSKI. Forty, fifty years.

Mr. LOESCHER. Yes, sir.

Senator MURKOWSKI. That does not include the timber that has been logged currently in the Cube Cove area; this is in addition to that?

Mr. LOESCHER. Yes, sir.

Senator MURKOWSKI. OK. Do you have any Forest Service records that would indicate or support that?

Mr. LOESCHER. Yes, we do. We could submit those for the record.[2]

Senator MURKOWSKI. I would also ask the Forest Service to submit for the record what they have as far as timber having been logged on Admiralty Island.

[The information referred to follows:]

---

[1] The annual statement was not received.

[2] Records to support timber logging not received.

1920

AUG 11 1986

Honorable Frank H. Murkowski
United States Senate
Washington, DC 20510

Dear Senator Murkowski:

At the oversight hearing on S. 1330 held on August 4, you requested additional information from the Forest Service. You wished to know how many acres of timber harvesting has occurred on Admiralty Island over the last century.

Following are acres harvested by decade, as well as known or estimated volumes of timber removed:

1911-20, 3,343 acres, estimate 117 million board feet (mmbf)
1921-30, 1,692 acres, estimate 59.2 mmbf
1931-40, 74 acres, estimate 2.6 mmbf
1941-50, 919 acres, estimate 32.2 mmbf
1951-60, 587 acres, 22.9 mmbf
1961-70, 4,160 acres, 133.6 mmbf
TOTALS - 10,775 acres, estimate 367.5 mmbf

These figures do not include the harvesting currently occurring at Cube Cove by Shee Atika, Incorporated. We do not have harvested volumes, however we estimate the harvested area to be approximately 820 acres at this time.

Sincerely,

R. MAX PETERSON
Chief

cc: Morrison, LMP
RF, R-10
LA

LMP:GMorrison:ec:8/8/86
Gary2,8

Senator **Murkowski**. In the testimony from the representatives of the village of Angoon and Kootznoowoo, the question occurs whether you basically support the House bill.

Mr. **Munday**. Angoon does support the House bill as it has been presented to us thus far. Tomorrow will be an interesting day for us.

Senator **Murkowski**. And Kootznoowoo, do they support 4883?

Mr. **Gamble**. Yes, we do.

Senator **Murkowski**. I hope you are all aware of the fact that while we have a House bill, we still have a little downside on just who is going to come up with what. It is one thing to come up with a proposal that suggests a substantial monetary settlement—and I do not disagree that it is in the public's interest to resolve the dispute over Admiralty—but where the emphasis is on appropriations, it would be contrary to our best interests to lead ourselves astray and assume that the Federal Government is going to be supportive in the sense of a legislation appropriation to a monetary amount.

I just see what is happening here on the committee and see what happens on the floor. These special legislation appropriations are just falling on deaf ears. It is not because they are not worthwhile causes; just the fact that there is little support for special type legislation.

That is why I, too, hope very much that we can resolve this issue. But I would not put too much emphasis on the monetary aspects of it, unfortunately, because you expect us as elected legislative officials to responsibly carry out your will and if your will is a $25 or $50 million appropriation, why, that is fine. But we also have the obligation of being realistic in communicating back to you what we think the odds are of getting it.

It is one thing to pass a bill and it is another thing to get the commitment for the funding. It sounds easy to go into the Forest Service receipts; it sounds like a nonbudget item. But you are really going into the Treasury. And as soon as somebody blows the whistle on that and asks the Chief of the Forest Service what his recommendation is, why, the tide begins to come in and it gets tougher, and tougher, and tougher.

So obviously there is another side to the Admiralty Island issue, and that is the side taken by those in the environmental community who happen to feel as I do that the sanctity of Admiralty should be the resolve, but they have failed in my opinion to take a responsible role in being a party to the resolve. And to me, as I indicated in my opening remarks, the resolve should be on the willingness to give up something that has already been withdrawn for the greater cause. And that again is the sanctity of Admiralty. But we are going to hear from them next, and I do not want to preclude their point of view or statements that they may care to make.

There is an old Italian saying, my Irish friend says, next to me, he says it is fun to authorize but hell to appropriate.

OK, gentlemen. Thanks very much. I appreciate your journey down here. If you want a good restaurant, why, we can recommend that, too.

Mr. Tim Mahoney, Washington representative of the Sierra Club who will be accompanied by Mr. Randall Snodgrass, Alaska program director of the Wilderness Society.

I take it Mr. Mahoney is not with us? We will lay his statement in the record.

[The prepared statement of Mr. Mahoney follows:]

SIERRA
CLUB
330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

TESTIMONY OF TIM MAHONEY
WASHINGTON REPRESENTATIVE, SIERRA CLUB
BEFORE
SUBCOMMITTEE ON PUBLIC LANDS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
REGARDING S. 1330,
AND GENERAL ISSUES CONCERNING
ADMIRALTY ISLAND

August 4, 1986

"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir*
National Headquarters: 730 Polk Street, San Francisco, California 94109 (415) 776-2211

Mr. Chairman, members of the Subcommittee, I am Tim Mahoney, Washington Representative of Sierra Club. Our testimony is based on extensive discussions within our organization, a retrospective on our past efforts on behalf of Admiralty Island and Southeast Alaska, our best analysis of the current political and judicial situation, and an especially careful judgment as to the best long-term future efforts which can be made on behalf of this special place. Sierra Club is opposed to S. 1330 and proposals to increase mining and logging on Admiralty Island which are not tied to a fair, comprehensive settlement of land claims on the Island.

BACKGROUND

Admiralty Island is a place of surpassing beauty and other natural resources. The world's largest number of nesting eagles is found on its shores and it is known as the fortress of the great brown bear because of their abundance. Long ago its values were recognized by the Tlingits who settled Angoon. And for more than 60 years, proposals have been made to establish Admiralty as a national park or a wildlife refuge.

Admiralty Island is a part of the Tongass National Forest. In the 1950's, the U.S. Forest Service devised the multi-billion board foot, 50-year, timber sale by which it would support one company in lumber harvesting. Admiralty and parts of the mainland of Southeast Alaska were one of these timber sale contracts. The sale was first awarded to the Georgia-Pacific Corporation, which investigated and then gave up its option money. The contract was then sold to the St. Regis Company -- which repeated this process. In 1968, the contract was awarded to the U.S. Plywood - Champion Corporation -- on essentially the original terms.

In 1968, the Sierra Club first explored Admiralty Island and became interested in its fate. Not being aware of the Champion contract, Dr. Edgar Wayburn requested that the-then Regional Forester, Howard Johnson, study Admiralty for wilderness status, pointing out it would be a unique large island wilderness area. However, the Forest Service proceeded with the sale contract. From 1970 to 1975, the Sierra Club was engaged in litigation against the Forest Service -- until Champion cancelled the contract.

The Alaska National Interest Lands Conservation Act established Admiralty Island as a 900,000-acre National Monument Wilderness. At the same time, it allowed Shee Atika Native Corporation's selection of 23,000 acres within the Monument. A series of lawsuits has resulted from this dichotomy.

The Sierra Club has always believed that an off-Island exchange was the logical solution to the conflict between Shee Atika's pursuit of corporate profits and the protection of Admiralty's wilderness and Angoon's culture. We worked hard in the days before ANILCA to find suitable resources off-Admiralty for Shee Atika, as well as for Kootznoowoo and Goldbelt, the two other Native corporations which wanted land on Admiralty.

As everyone knows, both Kootznoowoo and Goldbelt made successful exchanges. Shee Atika had given indications that it would exchange its selection, but suitable off-Island resources were not located in time. For reasons we have never been able to understand, Shee Atika did not continue to work toward an exchange after ANILCA. Instead, the Corporation began planning to clearcut the 23,000 acres it had been given on Admiralty.

After a careful review, our attorneys reported their opinion that the Cube Cove lands had been given to Shee Atika for exchange purposes. The opinion was based on the following: First, Angoon's experts said that the clearcutting of the Cube Cove lands would destroy up to 1/2 of

Angoon's hunting territory, and that this would destroy their traditional subsistence culture.

Second, ANILCA provided that "nothing...shall affect" Angoon's subsistence hunting; it also provided that the Secretary of Agriculture "shall not permit the...harvesting of timber" within the Admiralty Island Monument.

In other words, the facts indicated that the clearcutting would destroy Angoon's culture, while the law both protected Angoon's culture, and prevented clearcutting. These were extraordinary and compelling circumstances.

But these alone might not have been enough. The Sierra Club joined a legal battle because it also was confident that timber would be found off Admiralty and that the Shee Atika Corporation would be able to prosper somewhere other than in the middle of the Monument. We were confident both that the law protected the Island and that Shee Atika would be able to exchange its inholding for other resources off Admiralty.

The District Court has ruled that Shee Atika was not given the Cube Cove lands for exchange purposes only. Our lawyers are confident, however, that the appeals court will not let the ruling stand -- they will ultimately protect Admiralty's wilderness and Angoon's culture. We expect a ruling later this year.

The other issue on Admiralty concerns the mine in the Green's Creek drainage. The Sierra Club has never been in favor of the inevitable damage from the mining operation at Green's Creek. We fought to withdraw the area and the Carter Administration's 1978 Antiquities Act order would have eliminated the claims before validation. But the claims were allowed under ANILCA with a five-year limit on new claims.

NEGOTIATIONS

The Sierra Club has worked for the last year and a half on a comprehensive Admiralty Island solution that had these major elements:

1) The Shee Atika Corporation would exchange its 23,000-acre selection on Admiralty for lands on North Kuiu Island as part of its overall selections.

2) The people of Angoon would be able to continue their traditional subsistence life style.

3) Sealaska Corporation would exchange its subsurface rights to Shee Atika's 23,000-acre selections on Admiralty for subsurface rights in Green's Creek surrounding the existing claims.

   The subsurface in Green's Creek would be regulated under the same conditions as the current mine, and any additional mining should be "compatible, to the maximum extent feasible," with the Monument.

   Other subsurface inholdings such as the 1,650 acres belonging to Kootznoowoo, Inc. should likewise be taken off.

4) The Young's Lake Value Comparison Unit would be added to the Admiralty Island Wilderness Monument and the Admiralty Island National Wilderness Monument of 900,000 acres would be made whole.

5) All current litigation would be dismissed.

We have spent thousands of man hours, and tens of thousands of dollars, and attended dozens of meetings to attempt to draft acceptable legislation.

In December, 1985 we accepted the so-called "short bill" extending mining exploration and providing direction for the Forest Service to negotiate with Shee Atika. This is now law. We testified before the House Appropriations Committee on behalf of funding for an exchange.

Finally, we joined with Sealaska, Kootznoowoo, and The Wilderness Society this spring, and after days of negotiations and drafting, brought a proposal back to Mr. Seiberling and Mr. Young. We believed and still believe that the package we proposed would resolve the complex situation on Admiralty in a way that was generous financially, environmentally balanced, and which would not harm the 450 mmbf per year offering of timber, so it would not be detrimental to the timber industry.

THE TIMBER "PROBLEM"

Our suggested legislation would not harm the 450 mmbf cut because the selected lands on North Kuiu Island contain a yield of only approximately 5 mmbf/year, while the Forest Service had allocated lands in the Tongass Land Management Plan in a manner that the existing allocation of LUD III and LUD IV VCU's provides for a full 450 mmbf/year offering and an additional 9.5 mmbf/year set aside for off-Admiralty land exchanges. Thus, the proposal would leave an additional "cushion" available even after the North Kuiu transfer which could be put to other uses such as expanding the Monument at Young's Lake, or absorbing additional state selections.

It is not our opinion that this timber is available; it is a specific allocation in TLMP and a repeated fact in Forest Service documents from 1979 until November, 1985, at which time the agency shifted and now tries to say that the timber should be used for purposes other than those directed by TLMP.

In recent meetings, the agency representatives have attempted to say that the 9.5 mmbf off-Admiralty selection cushion should instead be used for anticipated remaining state selections--and that any lands used for off-Admiralty exchanges should be undeveloped roadless resources not currently in the timber base.

Even assuming that the state selections are a valid use for some portion of the off-Admiralty "cushion," the evidence appears ample that the Forest Service has overestimated the impacts of remaining state selections, and that the "cushion" that exists is large enough to accommodate both the state selections and the North Kuiu selection without affecting the remaining 450 mmbf land allocation of TLMP.

In a May 28 letter to House Public Lands Subcommittee Chairman Seiberling, the Alaska State Project Analyst concludes that "the Forest Service in its 706(b) report has overestimated the impact of state land selections on the timber yield of the Tongass National Forest."

Of course, Sec. 705 of ANILCA directs the Secretary to offer 450 mmbf of timber anyway and such direction would supersede the existing land allocation in TLMP in any case. The Secretary would be compelled to make changes in the land base if it became necessary to maintain the statutory timber offering.

But if more evidence is needed, the Forest Service has also stated that assumptions made in the original Tongass Land Management Plan were conservative in the calculation of "Allowable Cut Effect" and that new calculations will show that the existing timber base can yield more than 450 mmbf anyway. We have reason to believe that the new figures will show a 30 mmbf addition to 450 without any land base changes. The Forest Service will not reveal these new calculations at this time.

Unfortunately, the unwillingness of the Forest Service to honor its direction in TLMP and work with the North Kuiu selection proposal appears to have set off a series of decisions reflected in recent proposals such as H.R. 4883 which are outside the national interest.

ENVIRONMENTAL IMPACTS OF RECENT PROPOSALS

The the environmental damage of H.R. 4883 and other recent proposals is extensive, and overwhelming.

1. The mine at Green's Creek would occupy greater land area, run for a longer life and produce more spoils and waste material (some of which may be toxic), increasing the problems of long-term disturbance and pollution. The surface area and its developments will be controlled by private lessee rather than public ownership.

2. The mine may no longer be operated under the guidelines of ANILCA. Section 503(f)(2)(A) which protect Monument values currently and will instead meet a lower standard. Decisions on occupancy and the direction of mineral development may be radically altered. Marginal economic considerations may dictate operations without regard to the environment.

3. Unlike the present operation, H.R. 4883 as introduced would severely constrain rights of the courts to enforce the law and it will strip all federal laws from applicability on the mine site. It will also deny standing to private citizens. These dangerous judicial review provisions would apply to all harmful environmental aspects of this Act. (I shall speak more of the judicial review concerns later.)

4. Instead of the roaded and developed LUD IV lands of North Kuiu used as Shee Atika exchange lands, as anticipated by TLMP, H.R 4883 and

recent proposals would turn the undeveloped LUD II Bay of Pillars over for private timbering. Bay of Pillars is a Sierra Club wilderness proposal dating from the mid-1970's. It is an outstanding recreational and fisheries area adjacent to and buffering the Tebenkof Wilderness. Even the Forest Service realized Bay of Pillars should be protected and did so in TLMP.

Several months ago, conservationists in Alaska inquired of Dr. Wayburn why we were agreeing to "give away" Bay of Pillars. Dr. Wayburn replied that we had agreed to no such thing, that the North Kuiu holdings lay to the north of Pillars. The Juneau conservationists must have known something that we did not know in Washington. Activists continued to visit the area and organize just in case we were wrong. We were.

But let me add that the "privatization" and destruction of Bay of Pillars would be an unwarranted and unnecessary assault on the wilderness resource of Southeast Alaska. Because of the 9.5 million board foot "cushion," it is unnecessary. It would be tragic if this administratively protected roadless resource is needlessly destroyed.

5. Unlike the present situation, proposed legislation would result in an increase of 9.5 mmbf/year to the Tongass National Forest timber base by concluding off-Admiralty land exchanges without using any of the timber resources specifically set aside for it.

By screaming loudly, the Alaskan timber industry, far from being unaffected by the legislation, would be allowed to reap an additional timber windfall--an increase in the Tongass timber offering from 450 mmbf to 460 mmbf. It is our belief that the present 450 mmbf level is unreasonably high and should reduced to meet industry's true needs and to lessen development pressure on the Tongass. We most vigorously oppose this misuse of the timber resources.

6. The sale of 142 million board feet of timber on Cube Cove lands proposed in H.R. 4883 would put into law the very timber harvesting operations Sierra Club has worked since 1968 to prevent. Our members view the principle involved as akin to logging a wilderness before its designation or buying Redwood National Park and paying for it by cutting and selling the redwoods for picnic tables. The national interest in Admiralty Island is not for its timber production; it is for its wilderness and cultural values. Timber crops are renewable. Wilderness is not.

We have heard it said that the trees will grow back. The same can be said for many cut-over areas on the forest--such as North Kuiu. We have heard that we will not notice it after 20 years. Four-hundred-year-old trees do not grow back in 20 years. The wildlife and fisheries that a 400-year-old forest supports can tell the difference also.

There would be 50 miles of roads constructed on these lands, clearcuts all along the way. There are at least 55 separate clearcuts affecting approximately three quarters of the unit in the current Forest Service plans. Two of the three lakes would be surrounded by clearcuts. Two of the three "arms" of the selection would be developed. While Lake Florence would be spared, the devastation of so much cutting in so little time would be equivalent to the most intensely developed public forest in Alaska.

We have heard that the standards used by the Forest Service for logging are higher than the standards which now apply to the timbering operations in Cube Cove. This cannot be true. At the moment, affected parties can turn to the courts for some enforcement of some laws.

But under H.R. 4883, Section 14, Sierra Club would not have standing to sue, nor would any other conservation group or any normal citizen. NEPA would not apply, nor would the Clean Water Act, the

Coastal Zone Management Act, the Rivers and Harbors Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, nor any other law. The very laws the courts are examining with regard to operations at Cube Cove (there is no current litigation at Green's Creek) are the very laws which would be stripped from the proposed operations. Think of the most environmentally destructive Forest Service timber sale you have ever seen. Think of the worst mine on public land. They operate under stronger laws. How can these operations have higher standards? There would may not be a logging operation or a mine subject to less environmental scrutiny or fewer federal standards anywhere in the country.

And the timber sale is mandated for seven years, the mine for 25, 50 or indefinitely.

7. The proposed Cube Cove timber harvest proposal that would have no legal constraint does not help meet the 450 mmbf goal of the Forest Service--it is in addition to the 450 mmbf otherwise to be roaded and offered on a sustained basis. Thus, it is not subject to the Sec. 705 provision of ANILCA.

And, therefore, it needs to be publicly funded above and beyond the massive wasteful funding of Sec. 705. H.R. 4883 would create a new Sec. 705, which among other things, would fund without appropriation a series of roads and clearcuts violating the very area we want to preserve. It is one thing, Mr. Chairman, to go out of our way to assure adequate funding for Shee Atika itself. This is a worthy pursuit. It is quite another to sabotage the appropriations process to pay for more roading and logging by the Forest Service on top of the horrible provisions of Sec. 705.

According to recent studies, timber sales on the Tongass National Forest are the worst deficit timber sales in the country. The money spent to create this unnecessary and destructive sales may probably exceed the value of the timber removed by Shee Atika. It would be cheaper just to give them the money.

CONCLUSION

The basic goals conservationists seek to achieve are at an opposite pole from the Forest Service's agenda. While our interests are under considerable risks by continued uncertainty of the current situation, those risks may be preferable to the land allocations and judicial remedies proposed in H.R. 4883 and other recent proposals. We pledge to try to continue to find other ways to work with the other parties to protect the resources of Admiralty Island, and find fair and generous exchange options.

Thank you.

Senator **Murkowski**. All right, Mr. Snodgrass, you may proceed. We welcome you to the committee and look forward to your testimony.

STATEMENT OF RANDALL SNODGRASS, ALASKA PROGRAM DIRECTOR, THE WILDERNESS SOCIETY

Mr. **Snodgrass**. Thank you, Mr. Chairman.

Mr. Chairman, I am Randall Snodgrass, Alaska program director for the Wilderness Society. I am pleased to be here today to represent the more than 160,000 members of the Wilderness Society committed to wilderness preservation and the wise use and management of our Nation's public lands.

The Wilderness Society is opposed to S. 1330. The Wilderness Society, the Sierra Club, the Village of Angoon, Kootznoowoo, Shee Atika, Noranda, and Sealaska have all strived to achieve a comprehensive settlement of the issues on Admiralty Island National Monument. The concept embodied in S. 1330 is a beginning, but falls short of that goal.

We envision comprehensive legislation that protects Admiralty's important old-growth forest at Cube Cove by exchanging Shee Atika's inholding for timberland in the Tongass National Forest and designating the entire 23,000-acre area as a part of the National Wilderness System. In addition, such legislation would authorize the expansion of the Greens Creek mine.

We are opposed, however, to proposals that would exchange a roadless area on the Tongass for the Cube Cove inholding. We understand that the Forest Service has objected to an exchange of the proposed North Kuiu Island timberland for the Cube Cove site. The Forest Service contends that removal of the North Kuiu lands from the timber base would jeopardize their ability to supply 450-million-board feet per year to the timber industry, citing the potential impact of State land selections on the Tongass.

This attempt by the Forest Service to obstruct a workable exchange is in stark contrast to the public commitment made in the Tongass Land Management Plan to incorporate the Admiralty Island inholdings into the national monument. The plan states that much of the wilderness value of Admiralty lies in maintaining the island's integrity as a wilderness management unit unbroken by areas of intensive development with associated roads and logging. It is therefore determined to be in the public interest to move the Native's selections off of Admiralty.

TLMP reserved 15-million-board feet per year of the commercial timber base to enable land exchanges needed to move the Native selections off of Admiralty to proceed without affecting the ability of the Tongass to supply 450-million-board feet per year to industry. To date, 5.7-million-board feet of the reserve has been used to compensate for exchanges with the Goldbelt and Kootznoowoo Corp. This leaves 9.3-million-board feet in the reserve, more than enough to cover the 5.7-million-board feet involved in the North Kuiu Island exchange proposed by Shee Atika.

The Forest Service now is reneging on the commitment made in TLMP. Instead of helping to resolve the problems created by the Admiralty inholdings, the agency is doing its utmost to frustrate any resolution. There is nothing either in TLMP or the amendments to TLMP proposed by the Forest Service last January that identifies potential State selections as a cause for concern.

Senator MURKOWSKI. I wonder if you would summarize your statement.

Mr. SNODGRASS. Certainly. In short, the Wilderness Society believes that the Forest Service is misappropriating the 9.3-million-board feet off-Admiralty setaside. As I point out in my written statement, there are available remedies such as recalculating or redefining the allowable sale quantity to deal with any problem posed by State land selections.

We do not know whether the agency's failure to take the steps that can resolve this problem is due to incompetence or design. What is clear is that the Forest Service definition of allowable sale quantity forces the allocation of more land to timber production than is needed to meet the employment objectives of ANILCA and needlessly threatens vital wilderness lands and fish and wildlife habitat.

Further, we are opposed to opposals that would permit clearcutting a portion of the Cube Cove. We believe that it is without precedent to clearcut a wilderness area in order to preserve it.

The Wilderness Society believes that clearcutting and building logging roads at Cube Cove would significantly and permanently alter important wildlife habitat. Along with destroying the wilderness character of this area, logging the old-growth forests at Cube Cove would reduce populations of important subsistence species such as Sitka black-tailed deer, bear, salmon, and trout, and other wildlife so vital to the Tlingits of Angoon.

Mr. Chairman, we are encouraged by the progress that has been made during this Congress to achieve a truely comprehensive settlement for Admiralty Island. We stand ready to work toward resolving this issue in the time remaining this session.

[The prepared statement of Mr. Snodgrass follows:]

THE WILDERNESS SOCIETY

STATEMENT OF RANDALL SNODGRASS, THE WILDERNESS SOCIETY, BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE, PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION SUBCOMMITTEE, AT THE HEARING ON S. 1330 ON AUGUST 4, 1986

Mr. Chairman, members of the Subcommittee, I am Randall Snodgrass, Alaska Program Director for The Wilderness Society. I am pleased to be here today to represent the more than 160,000 members of The Wilderness Society committed to wilderness preservation and the wise use and management of our nation's public lands.

The Wilderness Society is opposed to S. 1330 -- a bill that would amend the Alaska National Interest Lands Conservation Act to allow expanded mineral exploration at the Greens Creek Mine on Admiralty Island National Monument. The Wilderness Society, Sierra Club, the village of Angoon, Kootznoowoo, Shee Atika, Noranda, and Sealaska have all strived to achieve a comprehensive settlement of the issues on Admiralty Island National Monument. The concept embodied in S. 1330 is a beginning, but falls short of that goal.

We envision comprehensive legislation that protects Admiralty's important old-growth forest at Cube Cove by exchanging Shee Atika's inholding for timberland in the Tongass National Forest and designating the entire 23,000 acre area as a part of the National Wilderness Preservation System. In addition such legislation would authorize the expansion of the Greens Creek Mine.

1400 EYE STREET, N.W. WASHINGTON, D.C. 20005
(202) 842-3400

We are opposed, however, to proposals that would exchange a roadless area on the Tongass for the Cube Cove inholding. We understand that the Forest Service has objected to an exchange of the proposed North Kuiu Island timberland for the Cube Cove site. The Forest Service contends that removal of the North Kuiu lands from the timber base would jeopardize their ability to supply 450 mmbf per year to the timber industry citing the potential impact of state land selections on the Tongass.

This attempt by the Forest Service to obstruct a workable exchange is in stark contrast to the public commitment made in the Tongass Land Management Plan (TLMP) to incorporate the Admiralty Island inholdings into the national monument. The plan states that "much of the wilderness value of Admiralty... lies in maintaining the island's integrity as a wilderness management unit unbroken by areas of intensive development with associated roads and logging. It is, therefore, determined to be in the public interest to move the native's selections off of Admiralty" (TLMP, pg. G1).

The plan goes on to say that "maintenance of the integrity of the island as a wilderness unit would enable the most efficient management by the Forest Service. Were native selections to remain on Admiralty, the Forest Service would incur additional costs such as boundary marking and posting, protection from trespass, and providing rights-of-way for access."

The plan reserved 15 million board feet (mmbf) per year of the commercial timber base to enable land exchanges needed to move the native selections off Admiralty to proceed without affecting the ability of the Tongass to supply 450 mmbf per year to industry. To date, 5.7

mmbf of the reserve has been used to compensate for exchanges with the Goldbelt and Kootznoowoo Corporations. This leaves 9.3 mmbf in the reserve, more than enough to cover the 5.7 mmbf involved in the North Kuiu exchange proposed by Shee Atika, and supported by The Wilderness Society and other conservation groups.

The Forest Service now is reneging on the commitment made in TLMP. Instead of helping to resolve the problems created by the Admiralty inholdings, the agency is doing its utmost to frustrate any resolution by insisting that future state land selections on the Tongass will prevent it from supplying 450 mmbf per year -- unless the 9.3 mmbf "set-aside" is diverted from its original purpose of enabling off-Admiralty exchanges.

There is nothing either in TLMP, or the amendments to TLMP proposed by the Forest Service last January, that identifies potential state selections as a cause for concern. It was known well in advance of the preparation of TLMP that the state was entitled to select 400,000 acres from national forest lands. For the Forest Service suddenly to claim that neither of the above documents anticipated this fact and, therefore, state selections are a cause for major concern, strains credulity.

However, assuming the state selections are a valid concern, the Forest Service could -- if it wanted to -- take two steps, either one of which would resolve this problem. One step would be to recalculate the Allowable Sale Quantity (ASQ) assuming that standards for utilization of harvested wood are restored to levels in effect between 1979 and 1984. The present calculations of ASQ assume that the current relaxed utilization standards will be in effect indefinitely, even though the

Forest Service describes the relaxed standards as "temporary." If the prior standards were reinstated, a significant amount of timber would be "freed up" to meet the contingency posed by the state selections. Curiously, the Forest Service thought it unnecessary to calculate the board foot effect of the "temporary" standards when it amended TLMP last January because it determined there were no other factors that would adversely affect the ASQ (see TLMP, amended winter 1985-86, pg. C7).

The other step the Forest Service could take would be to redefine the ASQ to include the great amounts of low quality logs that are routinely sold to the pulp mills and that are known as "utility logs" (logs that do not meet minimum standards for lumber, but have at least 50 percent of gross volume suitable for woodchip or pulp production). Such a redefinition would be in keeping with the legislative intent of ANILCA section 705 and would easily solve the state selection problem.

ANILCA does not specify whether the 4.5 billion board feet per decade timber supply goal includes utility volume, but this is the only reasonable interpretation since utility logs meet a major part of the raw material requirements of the pulp mills. The Forest Service, however, interprets section 705 as excluding utility volume because ANILCA's legislative record refers to TLMP as the basis of the timber supply goal, and TLMP calculates the ASQ by excluding utility volume.

In fact, TLMP contradicts itself throughout in its discussion of the 450 mmbf per year ASQ. Sometimes the figure excludes utility volume; sometimes it doesn't. The distinction may seem esoteric, but its impact is of great consequence. The Forest Service interpretation ignores more than 50 mmbf per year of timber supply for no good reason.

It is not reasonable to argue, as the Forest Service does, that Congress intended in Section 705 not only to insure a supply of timber adequate to maintain employment (4.5 bbf per decade), but also to make available a hidden, additional supply of 500 mmbf or more per decade. We can find nothing in the record to indicate that Members of Congress considering passage of the Alaska Lands Bill were advised of the contradictory timber supply definitions in TLMP or of the practical consequence of those contradictions.

It is clear from the record that Members of Congress were provided a rationale for the 450 mmbf goal that assumed the inclusion of utility logs. I refer you to the summary on page XV of TLMP and the September 14, 1978, letter from the Secretary of Agriculture to Senator Jackson that is reprinted in the TLMP Appendix (documents attached).

Both documents state that the intent of TLMP was to insure the maintenance of historical levels of regional timber harvest and timber industry employment. Both documents then refer to a historical harvest from the Tongass of 520 mmbf per year (average from 1970 through 1976). This historical average includes utility volume. Both documents go on to explain that the ASQ will be dropped to 450 mmbf because the difference is expected to be made up from timberlands selected by the state and native corporations. In the context of the historical harvest, it is clear that the 450 mmbf includes utility volume.

In short The Wilderness Society believes that the Forest Service is misappropriating the 9.3 mmbf off-Admiralty "set-aside". As we point out, there are other available remedies to deal with any problem posed by state land selections. We do not know whether the agency's failure to take the steps that can resolve this problem is due to incompetence or design. What is clear is that the Forest Service definition of allowable sale quantity forces the allocation of more land to timber production than is needed to meet the employment objectives of ANILCA and needlessly threatens vital wilderness lands and fish and wildlife habitat.

Further we are opposed to proposals that would permit clearcutting a portion of Cube Cove. The Wilderness Society has participated in good faith in the negotiations to achieve a comprehensive settlement of the issues on Admiralty Island because we want to see this important area protected in the Wilderness System. We believe that it is without precedent to clearcut a wilderness area in order to "preserve" it.

The U.S. Forest Service in the Tongass [National Forest] Land Management Plan (TLMP) (1979) classified the old growth forest at Cube Cove as having high wildlife and fisheries values. These magnificent old growth forests have developed over centuries. A typical old growth stand has trees of all ages, from inch-high seedlings to massive, 800-year old trees, 200 feet tall. Key features of old-growth include uneven-aged forest structure with different heights and diameters of trees, many large snags in various stages of decay, numerous downed logs on land and in streams, and a productive understory composed of mosses, forbs, and shrubs.

This old growth structure is critically important to several species of wildlife indigenous to southeast Alaska because it provides optimum habitat. Researchers monitoring the movements of radio-collared brown/grizzly bears on Admiralty and Chichagof Islands found that the habitat types receiving greatest use by the bears were old growth forest, avalanche slopes, alpine/subalpine, and riparian old-growth (Schoen and Beier, 1983, 1985, 1986).

Admiralty Island has the largest concentration of brown/grizzly bears in North America. Studies have shown that logging and roading are detrimental to bear populations (Elgmork, 1978). Timber activity at Cube Cove is bound to reduce the quality of bear habitat. Although recent clearcuts may provide abundant forage, the second-growth forest which will soon replace these clearcuts will provide extremely poor brown bear foraging habitat.

The Sitka black-tailed deer, an extremely important subsistence animal to the Tlingits, utilize all vegetation types during the summer, particularly the high quality forage in the alpine/subalpine areas (Merriam, 1966). However, during winter, when snow prohibits use of alpine/subalpine and other open areas, deer use old growth spruce/hemlock forests almost exclusively (Schoen and Wallmo, 1979). Old-growth, with its broad, multilayered canopy, intercepts significantly greater snowfall than lower volume forest stands, natural openings, or clearcuts (Kirchhoff and Schoen, 1985). Deer find nutritious food in these high volume old growth stands in winter when all other habitats have little food available.

Logging Cube Cove would have long-term implications for the deer population on Admiralty Island. Although for the first 15 or so years after a forest stand is clearcut productive forb and shrub communities exist, second-growth conifer stands rapidly become established (generally within 15 to 25 years), and completely shade out most forbs and shrubs the deer forage on for at least one hundred years. Generally, 150 to 200 years pass before shrub and herb seedings begin to recolonize the understory. Thus if clearcutting does occur at Cube Cove, more than a century will pass before the area will again provide optimal habitat for the Sitka black-tailed deer.

Many other species will also be adversely affected by clearcutting this old growth forest, including bald eagles and other birds. Eagles typically nest in trees that are approximately 400 to 500 years old. In southeast Alaska, most nests (85 percent) occur in old growth stands with the highest percentage of active nests in heavy, or higher volume, old growth stands. Few nests have ever been found in second growth trees (Hodges and Robards, 1982). Robards and Hodges state that it is unlikely that natural population levels in southeast Alaska can be maintained because 90 percent of the eagle's natural nesting and perching habitat will be eliminated or altered as the Forest Service proceeds with its current logging schedule. Admiralty Island must continue to serve these great birds as a sanctuary from the destructive forest practices occurring elsewhere in Southeast.

Recent research indicates that at least 26 other species of forest birds may depend on old-growth. Old-growth is especially important for many of these species because it provides winter habitat. Twenty resident bird species were found in Admiralty Island's old growth stands during the winter (Hughes, 1985). Another attraction in old-growth is the abundance of tree cavities. Four species of forest birds were found on Admiralty that depend on cavities in old-growth for nesting (Ibid).

The Forest Service has classified the Cube Cove VCUs as having extremely high commercial and sport fishing values (VCU 148: the Peanut Lake and Lake Kathleen drainage has the highest possible rating of 5; VCU 149: Ward Creek is rated at 3 on a scale of 0-5). However, changes in streamflow, sediment, water temperature, and food supply that would occur after clearcutting on these drainages would adversely affect salmon, trout, and other fish.

The Wilderness Society believes that clearcutting Cube Cove building logging roads at Cube Cove would significantly and permanently alter important wildlife habitat. Along with destroying the wilderness character of this area, logging the old-growth forests at Cube Cove would reduce populations of important subsistence species such as Sitka black-tailed deer, bear, salmon and trout, and other wildlife so vital to the Tlingits of Angoon.

Mr. Chairman, we are encouraged by the progress that has been made during this Congress to achieve a truly comprehensive settlement for Admiralty Island. We stand ready to work towards resolving this issue in the time remaining this session.

Thank you.

Implementation of the Timber Management Program

The planned timber management program will be implemented as rapidly as possible. However, it cannot be accomplished immediately because of the time required to study potential timber sales, comply with the NEPA process, plan the road system, and expand the pre-commercial thinning program.

The fiscal year (FY) 1980 Tongass timber program is for 520 MM bm with a transition to 450 MM bm by about FY 1982 or 1983. The timber program will fluctuate during the plan period but the annual averages during the 10-year period will not exceed 450 MM bm. Comparison of the FY 1980, the transition program, and the planned timber management program is shown in Figure J.

Figure J

	Budgeted Fiscal Year 1980 Program		First Year of Transition		Average TLMP Program 1980-1989	
	Volume (MMBM)	Cost ($MM)	Volume (MMBM)	Cost ($MM)	Volume (MMBM)	Cost ($MM)
Volume Available Without Additional Investment	520	22.8	464.8	20.4	267.3	11.7
Added Program						
Precommercial Thinning	-	-	10.2*	0.9	34.0**	3.0
Preroading	-	0.5	40.0	8.2	131.0	17.7
Advanced Logging Technology	-	-	5.0	1.2	17.7	2.8
Total Added Program			55.2	10.3	182.7	23.5
Total Program	520	23.3	520.0	30.7	450.0	35.2
Current Investment Level (FY 1978)		23.5	-	23.5	-	23.5
Additional Investment FY 1978 Level		(0.2)		7.2		11.7

* Based on Thinnipg an Additional 1900 Acres Above Present Level.
** Based on Thinning an Additional 6300 Acres Above Present Level.

These estimates of needed annual investments are based on average market conditions. Markets for Tongass timber products are cyclic. The investment levels required for any specific year will be determined by future market conditions. During periods of high selling values less government investment will be necessary.

Assuming constant market conditions, a sustained Tongass timber management program of 450 MM bm per year can only be attained during the plan decade if an annual additional investment (based on current prices) of $11,700,000 is made. If this additional investment is not made annually, the Tongass timber program would drop below 450 MM bm. With the current level of investment, the annual Tongass timber program would be 362 MM bm (fig. I).

From 1970 to 1976, the timber harvest on the Tongass has averaged about 520 MM bm. In more recent years the harvest has averaged 450 MM bm. Moreover, reduction in the area of the Tongass caused by Native and State selections and management prescriptions in the Proposed Action indicate the National Forest proposed level should be 450 MM bm. For 1980, the 520 MM bm level was used to develop the national timber output from the National Forest System. Beyond 1980, the proposed 450 MM bm from the Tongass will result in a 70 MM bm national shortfall. However, because timber products from the Tongass reach different markets, the reduction caused by the proposed Tongass program will not seriously effect the United States domestic supply.

F. September 14, 1978 Letter from Agriculture Secretary Bergland to the Senate Energy and Natural Resources Committee

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

SEP 14 1978

Honorable Henry M. Jackson
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On June 2, 1978, on behalf of the Administration, we provided you with our recommendations for designation of National Forest Wilderness in southeast and southcentral Alaska. We recommended seven areas totaling 5,936,000 acres for wilderness designation. Each contains spectacular scenery, diverse vegetation and wildlife, and is in a primitive, undeveloped condition. They will be outstanding additions to the National Wilderness Preservation System. In addition, we recommended that seven areas totaling 2,638,000 acres be designated for wilderness study. Inclusion of these National Forest wildernesses and wilderness study areas in the Alaska lands legislation provides the opportunity to provide truly comprehensive wilderness representation in Alaska. Our recommendations propose the strongest wilderness package coordinated with employment and other resource management needs. As the Committee begins its consideration of southeast Alaska wilderness, we wish to emphasize the Administration's strong support for its wilderness proposals.

As you are aware, the Forest Service has been proceeding with land management planning on the Tongass National Forest in Alaska. In this process, several alternatives have received additional discussion and review. We have had the benefit of the analysis of these alternatives as we continued to assess the issues involved in management of the National Forest lands. Our review has considered the national, State, and local interests. We strongly believe it is in the long-term interest of the Nation to provide for the wilderness designations we recommend. Such action is fully in keeping with the purposes of the National Forests and overall management of the Tongass National Forest.

In considering overall resource management on the Tongass National Forest in Alaska, including wilderness designations, a question has arisen as to the impact on employment in the timber industry. Assuming a continued strong market for timber in southeast Alaska, two factors will determine whether or not the current levels of employment in the southeast Alaska timber industry can be maintained or increased--the amount of timber that will be available from the National Forest and the amount that will be available from former National Forest lands transferred to State and Native ownership. In looking at the overall employment picture, it is also important to recognize the major economic value of Alaska's natural resources for tourism, sport fishing and hunting, and commercial fishing. Our proposed wilderness designations will contribute to the realization of these latter economic opportunities.

Historically (1970-76), the forest industry has harvested an average of 520 million board feet of timber and employed 3,065 people in southeast Alaska. This timber harvest and employment were supported by the total commercial forest land area which at that time was essentially all National Forest. This land base has changed, based on the Statehood and Native Claims Acts. Approximately 16 percent of the commercial forest land on the Tongass National Forest, containing some of the best commercial timber, has been or will be transferred to State and Native ownership. It is anticipated that substantial timber harvest will occur on Native lands as well as some harvest on State lands.

The appropriate level of timber harvest from the reduced capability of the Tongass National Forest must be carefully set after consideration of the new landownership pattern and the requirements of the National Forest Management Act concerning overall resource protection and management including wilderness designations.

The Administration plans to work with the Native Corporations to find ways to increase the marketability and domestic manufacture of substantial quantities of logs which are not in demand in the export market. The Administration also will work with industry to seek ways to lower production costs and achieve more economic yields from forested lands.

We estimate that timber sold from State and Native lands, formerly part of the Tongass National Forest, will support approximately 400 timber-related jobs, leaving approximately 2,600 to be supported from timber sold from the reduced land base of the Tongass National Forest. This would be necessary to maintain the historical average of approximately 3,000 timber-related jobs in southeast Alaska. To do this will require annual harvest of approximately 450 million board feet from the Tongass National Forest. Such harvest levels can be sustained without unacceptable loss of environmental and other resource values within our management program. Investments in advance roading, intensive timber management, and improved harvested techniques would be necessary. Our current estimates are that such a management effort would cost an estimated 27-27.5 million in current dollars, approximately 4 million dollars more than the 23.5 million dollars programmed for the Tongass National Forest in fiscal year 1978. This incremental cost seems manageable within the normal Forest Service budget allocation process.

We recognize that the actual amounts of timber-related employment from harvest on State and Native lands are dependent upon decisions by those landowners, and could differ from our current estimate. We are willing to cooperate in planning with the State and Native landowners, and we believe that we can adjust our plan to some degree to compensate for decisions on their part that would cause employment to vary significantly from our current estimates.

We must emphasize that success in maintaining any given level of total employment in southeast Alaska is dependent on many economic, social, and environmental factors. We also would like to point out that variations in forest products employment cannot be avoided if market conditions change significantly.

We will be happy to work with you, members of the Committee, and staff to clarify information concerning resources in Alaska in an effort to expedite your consideration of the Alaska lands legislation.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that the designation of the recommended wilderness would be in accord with the President's program.

Sincerely,

Bob Bergland

Bob Bergland
Secretary

Senator MURKOWSKI. Thank you, Mr. Snodgrass.

Your conclusion would infer that we were about to receive support for some of this legislation. But as I gather, you are opposed to both the House bill and the Senate bill.

Mr. SNODGRASS. Well as I point out in my written statement, we feel that in order to exchange the Shee Atika inholding that the pound of flesh that we hear about being extracted from the environmental community is the enlargement of the Greens Creek mine.

And we think that we have pointed out time and time again that the Forest Service is able in a number of different ways to maintain the 450-million-board feet per year and to allow the Shee Atika exchange to take place on the Tongass National Forest in an area that is already developed, that has an infrastructure in place in terms of roads and log transfer facilities.

We do not think that it is in the best interest of either conservationists or Shee Atika, for that matter, to go to an undeveloped area and to have to start all over.

Senator MURKOWSKI. Have you been to Admiralty Island?

Mr. SNODGRASS. Yes, sir.

Senator MURKOWSKI. Have you been to Cube Cove?

Mr. SNODGRASS. Yes, sir.

Senator MURKOWSKI. What do you think of Cube Cove? What is distinct about Cube Cove?

Mr. SNODGRASS. It is an old-growth forest.

Senator MURKOWSKI. Well, the whole island is an old-growth forest.

Mr. SNODGRASS. That is right. And it is extremely valuable in terms of the fishery, especially Sitka black-tailed deer habitat and particularly in the winter. I am not an expert on wildlife biology, but I know the experts that have been involved in this issue have said that they think that it would profoundly influence the migratory patterns, especially of Sitka black-tailed deer, if this 23,000 acres were clearcut.

Senator MURKOWSKI. I find that very, very interesting. I would like to have the names of any of those biologists.

Mr. SNODGRASS. The old-growth is important because of the heavy snow.

Senator MURKOWSKI. Well, I know. But when you consider the old-growth, you are considering leaving beach fringes, which are always left, and you are considering a very small acreage in relationship to the entire island. If you talk to people who deer-hunt in southeastern Alaska, they will tell you that some of the best deer hunting is in the logged-off areas where the deer go in and browse. But that is neither here nor there.

You propose a settlement that suggests that there is a responsible role for the Forest Service to play, free to litigation. What do you think would happen if the Forest Service suggested that some of the area in the Alaska Pump Co. allotment were made available? Do you think that the Alaska Pump Co. would want some consideration for the loss of timber within their allocation?

Mr. SNODGRASS. I do not know much about that, except that I know that North Kuiu Island is a contingency area; it is not a primary area for Alaska Pump.

Senator MURKOWSKI. Well, I know. But you must remember that when they put so much area into wilderness as a consequence of the Native selections in southeastern Alaska, it went into those contingency areas and many people would lead you to believe there is not enough accessible timber to meet the requirements within the timber sales. As a consequence, if the Forest Service starts granting exceptions, they are going to buy litigation and away you go. But again that is something else that we could discuss for a long time.

How can you suggest that an effort that is being attempted to resolve the primary objective of virtually everybody, including your organization and I assume that of the Sierra Club—that is to maintain the sanctity of Admiralty Island as the priority—oppose both bills and recognize the reality that timber is being cut on Admiralty Island today? It isn't going to stop because there is 23,000 acres there to be cut. And if you are going to do something to address what is happening, it is going to take a compromise of all parties.

To take the position that we object, simply means that the reality of what you object to is occurring. Why would you not want to be a party to a resolve that would be responsible for stopping the timber cutting on Admiralty and address the question of getting on with what we are all here for, and that is to address the sanctity of Admiralty Island because it is not working this way. Shee Atika is continuing to cut. They have every intention to cut until they are given some relief.

Mr. SNODGRASS. Well, I think it is a matter of principle.

Senator MURKOWSKI. Trees are coming.

Mr. SNODGRASS. I understand that. I understand that twice as many trees have been felled since I was there last summer. But the point is we are being asked to give up an undeveloped area that is just as important for subsistence to the people of Kake.

Senator MURKOWSKI. Kake?

Mr. SNODGRASS. Kake.

Senator MURKOWSKI. Well, just a minute now. The people at Kake? They are logging right behind Kake.

Mr. SNODGRASS. I am talking about the Bay of Pillars area. It is an important subsistence area. It is an undeveloped area. It is roadless.

Senator MURKOWSKI. Well, so is Admiralty, with the exception of Shee Atika's operation.

Mr. SNODGRASS. Right.

Senator MURKOWSKI. I do not understand why you will not become a party to a resolve—you and the environmental community—and get on with it. You either value the Bay of Pillars higher than you do Admiralty, or fail to recognize the reality of what is occurring on Admiralty. Because in this case you have got the Alaskans that are involved, the Native people that live off subsistence that are affected, the people of Angoon, the Kootznoowoo group, everybody trying to work something out. And the environmental community says no. In the meantime, timber is being cut.

Mr. SNODGRASS. We are not saying no. We are saying that the Forest Service has the means to alleviate our problem.

Senator MURKOWSKI. Well, the Forest Service does not happen to agree with you.

Mr. **Snodgrass**. Well, you did not ask them about it.

Senator **Murkowski**. Well, I will be happy to ask them and send you a copy of the letter.

Mr. **Snodgrass**. I would appreciate that.

Senator **Murkowski**. We have had a lot of conversations.

Mr. **Snodgrass**. They have never responded to any of the arguments that we have made on either the House side or in meetings that we have had in these negotiations.

Senator **Murkowski**. Well, that is unfortunate that their responses have not been brought to your attention, and I will see that they are brought to your attention.

But I would again remind you that I think the environmental community has a responsible role in addressing solutions. And I cannot help but note—and perhaps I am one of the few who has picked it up—in all cases testimony from the environmental community today has been in opposition, no effort made to address the issue of how we can resolve something. In one case it was a delay of a year; in your case it is opposition to both bills. You are not coming to grips with the real issue, and that is the 23,000 acres that are being logged on Admiralty Island, and I think that is, indeed, unfortunate.

I would urge that you go back and share with your colleagues the fact that Admiralty Island is not an issue of wishful thinking but dictates that progress is continuing, logging is occurring, and will unless this issue is resolved. When we get down to 20,000 or 22,000 acres, it is all going to be irrelevant. And if we have to wait that long, why, it does not say much for the system.

I am told that the Forest Service has responded. The Wilderness Society just does not believe the Forest Service's figures. And that does not surprise me in the least. I wish you a good day.

Thank you.

What do you know. We have got another one behind us. We are on the last one, Francis Scott Key. If there are any Alaskans that want to stick around, why, you might as well get educated on everything that is happening in Washington today.

We now have the opportunity to hear testimony on S. 2370.

As the sponsor of this legislation, I gather I take sole responsibility. I strongly endorse the mission of the Francis Scott Key Park Foundation, their tremendous efforts thus far to get this project off the ground. Many of my colleagues in the Senate have joined me as cosponsors of this legislation, which would authorize the Francis Scott Key Park Foundation to erect a memorial in the District of Columbia.

Francis Scott Key was an exemplary American who clearly demonstrated his capacity to volunteer his services for his country and his fellow citizens. During the War of 1812 Key ventured from Washington, DC, his home and his law office, to Baltimore to seek the release of an aging physician who had been captured by the British. Key succeeded but was himself arrested because of his knowledge of the impending British attack.

The scene he viewed at dawn while in captivity inspired his poem which was shortly immortalized as our national anthem, The Star Spangled Banner. Legislation to allow the long overdue recognition of Francis Scott Key's contribution is significant for a number of reasons. Most appealing: the memorial is to be established at no expense—and I commend you witnesses—to the Federal Government.

I understand that many man-hours and services have already been volunteered by individuals and organizations as well as contributions and financial pledges in the amount of $180,000.

Second, while Senate bill 2370 does not specify a site for the memorial, the location proposed by the foundation is significant as it will lead to the furbishing of a currently rather bleak plot of public land.

Where is it, does anybody know?

It is at the intersection of Key Bridge and M Street.

Finally, I was pleased to learn of the unanimous support by the Department of the Interior's National Capital Monument Advisory Committee for the establishment of a memorial. I would again like to acknowledge the effort of the Francis Scott Key Park Foundation. They have volunteered their time and efforts to fully recognize Francis Scott Key. I applaud your dedication.

Congresswoman Oakar has a statement of support for the record.

Jack Fish, of the Park Service, is submitting his statement for the record and it will be so noted in the record.

And I have submitted for the record a statement from my colleague on the Foreign Relations Committee where I serve, Senator Claiborne Pell, who also cosponsored this legislation.

[The prepared statements referred to follow:]

STATEMENT OF:

THE HONORABLE MARY ROSE OAKAR (D-OH)

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

S. 2370 :

"AUTHORIZING ESTABLISHMENT OF A MEMORIAL TO
FRANCIS SCOTT KEY"

AUGUST 4, 1986

ONE OF THE FIRST SONGS THAT I EVER LEARNED AS A CHILD WAS "THE STAR SPANGLED BANNER." I REMEMBER FROM AN EARLY AGE, MEMORIZING THAT BEAUTIFUL POEM. BEING OFFICIALLY ADOPTED IN 1931, IT IS ONLY FITTING THAT WE PRESENTLY ACKNOWLEDGE THE MAN WHO COMPOSED THESE HISTORIC WORDS.

THE IMMORTAL WORDS OF OUR NATIONAL ANTHEM CONTINUE TO CAPTURE THE SPIRIT OF OUR GREAT NATION, 172 YEARS AFTER ITS CREATION. "THE STAR SPANGLED BANNER" IS OUR PATRIOTIC HYMN, AN AFFIRMATION OF THE LOVE OF COUNTRY AND PRIDE IN OUR NATION WHICH ALL BRAVE AMERICANS HOLD FOR THIS "LAND OF THE FREE AND HOME OF THE BRAVE."

ON MARCH 11, 1986, THE COMMITTEE ON HOUSE ADMINISTRATION'S TASK FORCE ON LIBRARIES AND MEMORIALS OF WHICH I CHAIR, CONDUCTED A HEARING FOR THIS LEGISLATION. AMONG THE DISTINGUISHED WITNESSES TO SUBMIT FAVORABLE TESTIMONY FOR THIS MEMORIAL WERE SENATOR CLAIBORNE PELL, SENATOR DENNIS DeCONCINI, CONGRESSMAN CLAUDE PEPPER, CONGRESSMAN WALTER E. FAUNTROY, CONGRESSMAN STENY HOYER, AND SEVERAL MEMBERS OF THE FRANCIS SCOTT KEY PARK FOUNDATION.

AS AUTHOR OF OUR NATIONAL ANTHEM, "THE STAR SPANGLED BANNER", FRANCIS SCOTT KEY IS A FIGURE OF CULTURAL AND HISTORICAL SIGNIFICANCE. KEY WAS INSPIRED TO COMPOSE THIS PATRIOTIC SONG, WHEN OUR NATION FACED ONE OF ITS DARKEST HOURS, DURING THE BATTLE OF FORT McHENRY IN THE WAR OF 1812. HIS LIFE PROVIDES AN INSPIRATION TO AMERICANS BY SYMBOLIZING THE POTENTIAL IN EACH OF US TO MAKE VOLUNTARY AND EXTRAORDINARY CONTRIBUTIONS TO OUR COUNTRY.

ESTABLISHMENT OF THIS MEMORIAL WILL BE PAID SOLELY BY PRIVATE FUNDS WHICH WILL BE COLLECTED BY THE FRANCIS SCOTT KEY PARK FOUNDATION, A NON-PROFIT CORPORATION FOUNDED IN JANUARY, 1983. THE FOUNDATION HAS COLLECTED OVER $130,000 TO DATE. MEMBERS OF THE FOUNDATION INCLUDE A WIDE PROFESSIONAL CROSS SECTION, FROM BUSINESS EXECUTIVES TO ELECTED OFFICIALS.

THE PROPOSED SIGHT FOR THIS MEMORIAL IS UNIQUE IN THAT IT DOES NOT IMPINGE ON THE LIMITED SPACE CURRENTLY AVAILABLE FOR NATIONAL MEMORIALS. THE LOCATION CHOSEN IS A VACANT PLOT OF GOVERNMENT LAND AT THE INTERSECTION OF THE KEY BRIDGE AND "M" STREET. THIS AREA WAS CHOSEN FOR THE DUAL PURPOSE OF BRINGING BEAUTY TO A BLIGHTED AREA AND CREATING A MEMORIAL TO KEY NEAR THE ORIGINAL SITE OF HIS HOME AND LAW OFFICE. THE LOCATION, AS WELL AS THE CONCEPT FOR THE LEGISLATION, HAS BEEN APPROVED BY THE SECRETARY OF INTERIOR'S NATIONAL CAPITAL MEMORIAL ADVISORY COMMITTEE.

THANK YOU SENATOR WALLOP AND MEMBERS OF THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION FOR CONDUCTING THIS HEARING ON S. 2370 WHICH WAS INTRODUCED BY MY COLLEAGUE SENATOR FRANK MURKOWSKI (R-ALASKA). I URGE THE SENATE TO ACT FAVORABLY ON THIS LEGISLATION.

STATEMENT OF MANUS J. FISH, REGIONAL DIRECTOR, NATIONAL CAPITAL REGION, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 2370, TO ALLOW THE FRANCIS SCOTT KEY PARK FOUNDATION, INCORPORATED, TO ERECT A MEMORIAL IN THE DISTRICT OF COLUMBIA.

AUGUST 4, 1986

Mr. Chairman, I appreciate this opportunity to provide your subcommittee with the views of this Department on S. 2370.

We recommend the enactment of S. 2370 if it is amended as suggested in my statement.

This bill would authorize the Francis Scott Key Park Foundation, Incorporated, to erect a memorial on public grounds in the District of Columbia in commemoration of Francis Scott Key, the author of the words to "The Star Spangled Banner". It authorizes the Secretary of the Interior to select a suitable site, with the approval of the Commission of Fine Arts and the National Capital Planning Commission, except that if the site selected is under the jurisdiction of the District Government, the approval of the Mayor should be obtained. The design and plans for the memorial shall be subject to the approval of the Secretary of the Interior, the Commission of Fine Arts, and the National Capital Planning Commission, except that if approval or specific objection from any of the foregoing is not given within 90 days, the bill provides that such approval shall be deemed to be given. Authority to erect a memorial shall lapse unless it is commenced within five years from the date of the enactment of this legislation and unless funds are certified as being available by the Secretary of the Interior in an amount sufficient to insure completion of the memorial.

We recommend that the bill be amended to eliminate the requirement that approval or specific objection be obtained for the design and plans within 90 days or such approval will be deemed to have been given. The review and approval process should not be limited to a specific time frame, since the two Commissions only meet monthly and bi-monthly and submission must be provided to them 30 days prior to their meetings.

We also recommend that language be added to clarify that if the memorial is established on National Park Service land, then the Secretary of the Interior is authorized to maintain it.

On November 14, 1985, the Secretary of the Interior's National Capital Memorial Advisory Committee recommended that the Department of the Interior support legislation to authorize the Foundation to erect a memorial to Francis Scott Key. We understand that the memorial will consist of a bust, which has already been fabricated, in a small landscaped setting.

Mr. Chairman, we would expect that the standards applicable to subject matter, site and design approval, maintenance fund, and criteria for construction contained in the general legislation, S. 2522, would apply to this proposed memorial. We believe considerations of the surroundings, protection of open space, the requirement for durable materials, and assurances of funding are all appropriate elements of the general bill that should be applied to the proposed Key memorial.

This concludes my prepared testimony, Mr. Chairman. I will be pleased to respond to any questions that you may have.

Testimony by Senator Claiborne Pell (D-R.I.)
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Reserved Water
and Resource Conservation
August 4, 1986 at 10 a.m. in SD-336

Mr. Chairman, thank you for this opportunity to present my enthusiastic endorsement of S. 2370 and for the creation of a memorial to Francis Scott Key--the author of the words to the national anthem of the United States.

I am a cosponsor of this measure, introduced by Senator Murkowski, which would authorize the Francis Scott Key Park Foundation to establish this memorial on federal land in the District of Columbia or its environs.

I also have accepted a thoughtful offer by the Francis Scott Key Park Foundation to serve on that group's National Advisory Council.

This legislation, quite properly, does not name a specific site but vests the responsibility for selecting a site and designing an appropriate memorial with the Foundation.

I understand that both the site selection and the memorial design will be subject to the approval of the Commission of Fine Arts and the National Capital Planning Commission.

--more--

The site selection process is open, but I would like to add my endorsement for a location the Foundation has under consideration along M Street in Georgetown at the end of the Francis Scott Key Bridge.

Francis Scott Key's home and law office were located not far from this site in Georgetown at the time he wrote the inspiring words to "The Star Spangled Banner". (The original site of his home and law office was taken for a ramp from the Whitehurst Freeway to Key Bridge.)

Just to make the record absolutely clear, I would like to add that my residence on Prospect Street in Georgetown is only a block from the federally-owned site that the foundation has under consideration.

I think the memorial would be a welcome addition to the nation's historic legacy, a welcome addition to the many attractions of Washington, D.C., and a welcome addition to the Georgetown neighborhood.

The site, on the southeast corner of the intersection of Key Bridge and M Street, is unused and unattractive. The creation of the Francis Scott Key Memorial there would dovetail nicely with Park Service plans for the C&O Canal National Historical Park and the Georgetown Waterfront Park.

--more--

Regardless of the location of the memorial, I am delighted to join in support of the legislation that clears the way for its creation on federal property, but without additional taxpayers expense.

The Francis Scott Key Park Foundation summed up the need for "a star spangled banner park":

"The immortal words of our National Anthem capture the spirit of our great nation, even today, 171 years after their creation. The Star Spangled Banner is our patriotic hymn, an affirmation of the love of country and pride in our nation that all Americans hold for this 'land of the free and home of the brave.'

"Generations of Americans have expressed their deepest patriotism while singing the inspiring verses of our National Anthem, but few know much about the man who penned these important words.

"For example, not many people remember that Francis Scott Key, a young lawyer from Washington, D.C., wrote The Star Spangled Banner in 1814 while on a mission of mercy to free an aging physician captured by the British. Even though he succeeded, Key himself was arrested because he knew about the imminent British plans to attack Baltimore.

--more--

"While under guard, he witnessed 'the bombs bursing in air' over Ft. McHenry. 'By the dawn's early light' he saw 'that our flag was still there,' signaling defeat of the British and providing inspiration for his poem, 'The Defence of Ft. McHenry.'

"The words were soon put to music and adopted by Americans everywhere as the song to be sung at important ceremonial functions. Finally, in 1931, The Star Spangled Banner became the official National Anthem of the United States of America."

I agree with Senator Murkowski, with the other cosponsors of this legislation, and with the foundation that, soon, there should be a public park in the nation's capital as a national tribute to Francis Scott Key and as a memorial to his stirring contribution to our historical legacy.

Thank you.

Senator **Murkowski**. We have four witnesses. The first is Mr. Norman Larsen, president of the Francis Scott Key Park Foundation; Ms. Kay Halle, a member of the board; and Mr. Thomas G. Pownall, chairman of the Francis Scott Key Park Foundation; and Mr. T. Paul Imse, secretary and general counsel. Lady and gentlemen, please proceed.

I welcome you to the committee. I am sorry that we had to put you on rather late. If you were out there listening, you know what went on, anyway.

Please proceed with your statements. I would like to limit your testimony to 3 minutes, if I may.

STATEMENT OF NORMAN L. LARSEN, PRESIDENT, FRANCIS SCOTT KEY PARK FOUNDATION

Mr. **Larsen**. Mr. Chairman, thank you very much.

Good afternoon, Mr. Chairman, and members of the subcommittee. I thank you for this opportunity to address you today in support of S. 2370.

My name is Normal L. Larsen; I am the president of the Francis Scott Key Foundation. I wish to provide the subcommittee with a capsule history of the foundation so that the Congress may be satisfied that the foundation is the appropriate organization to create the Francis Scott Key Memorial.

The whole idea of the Key Memorial began with the dream of our founder, Randolph Roffman, who wondered why there was no memorial to the father of our national anthem in the city where he lived and worked and from which he traveled on his mission of mercy which gave rise to the immortal words of "The Star Spangled Banner."

Out of this dream grew the creation of the Francis Scott Key Park Foundation, a 501(c)(3) tax exempt organization in 1983. Since that time a growing cadre of volunteers have been working to make the Francis Scott Key Memorial become a reality. The foundation has also developed an ongoing working relationship with various agencies of the Federal and District of Columbia Governments, as it has sought authority to develop the memorial at our proposed site.

The foundation's fund-raising activities over the past 3 years have helped us develop a growing group of willing and generous donors and create our National Advisory Council of leaders in politics, business, and the arts.

The internationally known landscape architectural firm of Oehme, van Sweden & Associates has been commissioned to work on a preliminary design for the Francis Scott Key Memorial.

Last fall the foundation was extremely fortunate to have Thomas G. Pownall, the CEO of Martin Marietta Corp., to volunteer to become the foundation's chairman. He and other foundation members are presently working with the fund-raising consulting firm of Robert F. Semple & Associates to develop the national fund-raising campaign that will make this memorial become a reality.

The foundation plans to raise all funds necessary to complete the project with no request made at any point for any appropriations from Federal funds.

In closing, I would urge that the subcommittee act favorably on S. 2370 so that this long-overdue memorial to Francis Scott Key can become a reality. I and other officers and members of the board will be happy to answer any questions you may have after all statements have been presented today.

Thank you very much.

[The prepared statement of Mr. Larsen follows:]

STATEMENT OF

NORMAN L. LARSEN
PRESIDENT
OF THE

FRANCIS SCOTT KEY PARK FOUNDATION

IN SUPPORT OF

S.2370 TO AUTHORIZE THE ESTABLISHMENT OF A MEMORIAL TO FRANCIS SCOTT KEY

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER
AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

AUGUST 4, 1986

Good Afternoon, Mr. Chairman and members of the Subcommittee. I very much appreciate the opportunity to appear before you today on behalf of S.2370.

My name is NORMAN L. LARSEN, and I am the President of the **FRANCIS SCOTT KEY PARK FOUNDATION.** In my statement this afternoon, I want to provide you with a capsule history of the Foundation.

We believe that it is important for you to know a little bit about the Foundation. This is because the legislation before you, in addition to authorizing the establishment of a memorial to Francis Scott Key, authorizes the FRANCIS SCOTT KEY PARK FOUNDATION to establish and build the memorial, and the Congress should certainly be satisfied that we are an appropriate organization to carry this forward.

The whole idea of a memorial to KEY began as a dream of our Founder, RANDOLPH ROFFMAN, in 1982. He wondered why there was no memorial to FRANCIS SCOTT KEY, the author of "The Star Spangled Banner", in this city where he lived and worked and from which he travelled on that mission of mercy which gave rise to the immortal words of our National Anthem. Mr. Roffman then had the inspiration that, not only was a memorial to KEY long overdue, an appropriate location would be on a presently vacant and unattractive plot of government land at the intersection of KEY BRIDGE and "M" STREET. This had the dual beauty of improving a blighted area and creating a memorial to KEY near the site of his home and law office in 1814.

Mr. Roffman's enthusiasm infected a number of people, including myself and sculptor BETTY MAILHOUSE DUNSTON, who agreed to begin work on a pro bono basis, on a larger-than-life bust of KEY for the memorial. This bust is now cast in bronze. As we began to move forward to try to carry out this dream, the FRANCIS SCOTT KEY PARK FOUNDATION was established in January of 1983, and the Foundation received its section 501(c)(3) tax exemption as a public charity.

Since that time, we have been active on a number of fronts. We have been working with various Federal and District of Columbia agencies with the goal of securing our proposed site for the memorial. This whole process was certainly delayed while decisions as to the repair and possible reconfiguration of the Whitehurst Freeway were being made. The delay, however, gave us a great opportunity to develop an ongoing working relationship with these agencies, and this will greatly assist us as we try to bring our dream to fruition.

We have also been developing a growing cadre of volunteers. The Foundation has been extremely fortunate in recruiting men and women from many walks of life from throughout the area. These volunteers have selflessly given of their time and expertise to help the Foundation reach its goals. The Foundation has no paid employees, and the dedicated efforts of these volunteers have saved untold sums of money which the Foundation will be able to dedicate to the accomplishment of its dream.

The primary, although not the only, fund raising vehicle the Foundation has used over the past three years is an annual Black tie Dinner Dance. These events have not only provided us with substantial funds for the Foundation, but they have also increased our visibility in the community and helped develop a cadre of willing and generous donors. The attendance at these dinners has increased from 100 in 1983 to nearly 300 last September. In addition, these events have helped us create our National Advisory Council of leaders in politics, business and the arts from throughout the country and our Historic Advisory Council from notable historians from our region.

A preliminary historical research study of the site has given us an insight into the proposed memorial site's own rich history and has warned us about historical resources that are probably present. We will endeavor to protect and preserve these resources as the memorial design is developed.

Early last year we engaged the services of the fund raising consulting firm of ROBERT F. SEMPLE & ASSOCIATES to do a feasibility study of our project. As a result of their recommendations, based upon their extensive research and interviews, we have been able to start preparing for the major fund raising effort which we will be commencing when the legislation before you is enacted.

We have also engaged the internationally known landscape architectural firm of OEHME, van SWEDEN & ASSOCIATES to begin developing design concepts for our proposed memorial site. At such time as we secure the authority for the memorial to be on that site, we will have the architects proceed through the necessary review process for the design and complete the plans and specifications for construction of the memorial.

Last fall the Foundation was extremely fortunate to have THOMAS G. POWNALL, the Chief Executive Officer of MARTIN MARIETTA CORPORATION, volunteer to become the Foundation's Chairman. He will be appearing before you later this afternoon, and we are confident that he will help provide the leadership which will enable the Foundation to reach its financial goals and to build the memorial to FRANCIS SCOTT KEY.

In closing, I would again urge that the Subcommittee favorably act upon S.2370 so that this long overdue memorial to FRANCIS SCOTT KEY can become a reality.

I and other officers or members of the Board will be happy to answer any questions you may have after all statements have been presented today.

Thank you.

Norman L. Larsen
President
Francis Scott Key Park Foundation

Senator **Murkowski**. Thank you very much.

Our next witness is Mr. Pownall.

STATEMENT OF THOMAS G. POWNALL, CHAIRMAN, FRANCIS SCOTT KEY PARK FOUNDATION

Mr. **Pownall**. Mr. Chairman, thank you very much. It is a pleasure to be here to speak on behalf of S. 2370. My name is Thomas G. Pownall, and I am the chairman of the Francis Scott Key Park Foundation. My purpose is to give you some confidence that we have some prospect of raising the funds sufficient to support this park.

We have, as Mr. Larsen has already indicated, hired a well-known architect who has given us some estimates that suggest that $1 million would be sufficient to carry the park forward to fruition and to establish a trust fund to maintain it afterwards.

My experience at raising money is limited but I think adequate for this purpose. I have worked on several fundraising campaigns which have been successful. And we have employed as advisers a professional fundraising company called—what is the name of that outfit?—Robert Semple. And I believe that he and certainly we believe that there are sufficient corporations and trusts and individuals that would permit us to raise the million dollars that we need.

We would expect to be able to accomplish this in a year's time, and I believe that the prospect of that is quite bright.

Thank you very much.

[The prepared statement of Mr. Pownall follows:]

STATEMENT OF

THOMAS G. POWNALL
CHAIRMAN
OF THE
FRANCIS SCOTT KEY PARK FOUNDATION

IN SUPPORT OF

S.2370 TO AUTHORIZE THE
ESTABLISHMENT OF A MEMORIAL
TO FRANCIS SCOTT KEY

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED
WATER AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

AUGUST 4, 1986

GOOD AFTERNOON, LADIES AND GENTLEMEN. I'M PLEASED TO APPEAR BEFORE YOU TODAY ON BEHALF OF S. 2370.

MY NAME IS THOMAS G. POWNALL AND I AM THE CHAIRMAN OF THE BOARD OF THE FRANCIS SCOTT KEY PARK FOUNDATION. MY STATEMENT THIS AFTERNOON WILL ADDRESS THE FOUNDATION'S PROSPECTS FOR RAISING SUFFICIENT FUNDS TO PAY THE EXPENSE OF THE ESTABLISHMENT OF THE MEMORIAL.

AS NORMAN LARSEN HAS STATED, THE FOUNDATION HAS COMMISSIONED THE FIRM OF OEHME VAN SWEDEN AND ASSOCIATES TO DEVELOP A PROPOSED DESIGN OF THE MEMORIAL PARK. PRELIMINARY ESTIMATES INDICATE THAT A ONE MILLION DOLLAR FUND WILL BE SUFFICIENT TO BOTH CONSTRUCT THE MEMORIAL PARK AND ENDOW ITS MAINTENANCE. OUR FUND RAISING CAMPAIGN WILL, THEREFORE, HAVE THAT AMOUNT AS AN OBJECTIVE.

I HAVE HAD EXPERIENCE WORKING ON AND LEADING SUBSTANTIAL FUND RAISING DRIVES ON BEHALF OF THE VIETNAM MEMORIAL, THE NAVY MEMORIAL, AND THE MOREHOUSE SCHOOL OF MEDICINE.

IT IS MY OPINION THAT AN OBJECTIVE OF RAISING ONE MILLION DOLLARS IS FEASIBLE. THAT OPINION IS SHARED BY ROBERT F. SEMPLE AND ASSOCIATES, THE PROFESSIONAL CONSULTANTS WHO CONDUCTED THE VIETNAM MEMORIAL CAMPAIGN AND WHO ARE SERVING AS CONSULTANTS TO THE FRANCIS SCOTT KEY PARK FOUNDATION. WE BELIEVE THERE

ARE SUFFICIENT INDIVIDUAL, CORPORATE, AND FOUNDATION DONORS WHO WILL BE WILLING TO SUPPORT AN EFFORT WHICH SPEAKS TO THE NATION'S FEELINGS OF PATRIOTISM AND WHICH IS FREE OF CONTROVERSY. ONCE WE HAVE THE APPROVAL OF CONGRESS TO PROCEED, IT IS OUR INTENT TO BEGIN THE CAMPAIGN. OUR EXPECTATION IS THAT THE PROCESS WILL BE COMPLETED BY THE END OF 1987.

IN CLOSING, I WOULD LIKE TO EXPRESS MY HOPE THAT THE SUBCOMMITTEE RECOMMENDS APPROVAL OF S.2370. THANK YOU.

Senator **Murkowski**. Thank you very much, Mr. Pownall.

The next witness is Ms. Halle.

STATEMENT OF KAY MURPHY HALLE, MEMBER, BOARD OF DIRECTORS, FRANCIS SCOTT KEY PARK FOUNDATION

Ms. **Halle**. Good afternoon, Mr. Chairman and members of the subcommittee. I want to thank you for this opportunity to testify before you today in support of Senate bill 2370 to authorize the establishment of a memorial to Francis Scott Key, long overdue.

My name is Kay Murphy Halle, and I am a member of the board of directors of the Francis Scott Key Park Foundation. This afternoon I would like to speak to you about the importance of the proposed site for the Francis Scott Key Memorial.

I realize that the legislation before you is not site specific. However, I believe it is important to inform you of why this site is so appropriate for the location of the Key Memorial. We would hope that the legislative history for this bill could reflect the support of Congress for our proposed site.

The foundation's proposed site is at the intersection of Key Bridge and M Street in Northwest Washington. This is the last open space near the site where Key lived and practiced law at the time he wrote "The Star Spangled Banner."

In addition, the establishment of the Key Memorial at that site would take a blighted plot of vacant land and create a dramatic and beautiful gateway into the Nation's capital in furtherance of the goals of the L'Enfant and McMillan plans.

The development of the Francis Scott Key Memorial at our proposed site will also dovetail very nicely with the National Park Service plans for developing a Georgetown Waterfront Park and making improvements to the Georgetown section of the C&O Canal. Thus, the placement of the Key Memorial there will assist the Park Service in the accomplishment of its goals without the expenditure of scarce Federal funds.

I want to thank you, again, for the opportunity to appear before you on behalf of this very important piece of legislation. I have long believed that the lack of a memorial to Francis Scott Key here in this city, where he lived and worked and from which he traveled on his fateful mission of mercy which inspired the immortal words of our National Anthem is a tragic oversight and one which should be rectified.

I urge that the subcommittee vote in favor of Senate bill 2370 and assist us in securing its passage by the Congress.

Thank you very much.

[The prepared statement of Ms. Halle follows:]

STATEMENT OF

KAY MURPHY HALLE
A MEMBER OF THE BOARD OF DIRECTORS
OF THE
FRANCIS SCOTT KEY PARK FOUNDATION

IN SUPPORT OF

S. 2370 TO AUTHORIZE THE
ESTABLISHMENT OF A MEMORIAL
TO FRANCIS SCOTT KEY

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED
WATER AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

AUGUST 4, 1986

Good afternoon, Mr. Chairman and Members of the Subcommittee. I want to thank you for this opportunity to appear before you to testify on behalf of S. 2370, to authorize the establishment of a memorial to Francis Scott Key.

My name is Kay Murphy Halle, and I am a member of the Board of Directors of the Francis Scott Key Park Foundation. This afternoon, I would like to speak to you about the importance of our proposed site for the memorial to Francis Scott Key.

I realize that the legislation before you does not designate where the memorial will be located and that this is standard procedure for legislation of this nature. However, I believe it is important to inform you of our intentions so that the Congress understands why this site is so appropriate for the location of the memorial to Key. We would also hope that the legislative history of this bill could reflect the support of the Congress for the designation of our proposed site as the location for the Key Memorial.

That site is the presently vacant and unkempt plot of land at the the intersection of Key Bridge and M Street in Northwest Washington, D.C. This site, which is also bounded by 34th Street and the C&O Canal National Historical Park, is located on the map which is attached to my prepared statement, and I would ask that this map be made part of the hearing record.

Certainly, the most important reason why we wish to have that particular site for the Key Memorial is that it is the last remaining open space near the site of the home where Key lived and was practicing law at the time he wrote "The Star Spangled Banner." As you know, Key's home was tragically lost to highway construction in 1947, and we believe that it is only appropriate that he be honored at a site which is reasonably close to where his home once stood.

There are a number of other reasons why we believe that the creation of the memorial to Francis Scott Key at the proposed site is so very appropriate. One of these is the simple opportunity to take a blighted piece of land and turn it into something beautiful, memorable and long overdue.

In addition, the creation of the Key Memorial at that site will present a beautiful and dramatic gateway into our Capital City where none presently exists. We are blessed with a number of beautiful entrances into our city which are enhanced by our parks and memorials. These splendid gateways provide a thrilling announcement to visitors and residents alike that they are entering our Nation's Capital. Key Bridge, however, is not one of them. The establishment of the Key Memorial there would rectify this problem.

The plans for the design of our Capital City were developed by Pierre L'Enfant along with President George Washington. They were further refined by the McMillan plan, and the plans called for gateways at the major entrances to the city. So does the current Comprehensive Plan for the District of Columbia.

By creating the Francis Scott Key Memorial at our proposed site, we would be able to provide a now lacking, but needed, gateway, and we would be able to do so without the expenditure of federal funds.

The location of the memorial at that gateway site would also dovetail very nicely with the National Park Service plans for the area. As you may know, the Park Service is presently working on plans for the development of the Georgetown Waterfront Park. In addition to the development of the waterfront into parkland, these plans also envision improvements to the Georgetown section of the C&O Canal, providing a link between the Canal and the waterfront and the acquisition of our proposed memorial site as a gateway to the Canal. Parenthetically, I would note that the Park Service is very aware of our desire to create the Key Memorial at that site, and we are aware of no objections which have been made with respect to our proposal. One very significant problem with the present Park Service plans, however, is that they are not funded, and, given present budgetary realities, the prospect for their being completely funded in the near term is not good.

If we are able to develop the Francis Scott Key Memorial at our proposed site, we will also be able to assist the Park Service in the accomplishment of its goals without the expenditure of federal funds. In all of our planning for the design of the Key Memorial, we have been very conscious of the need for the site to serve as a gateway into the C&O Canal and for it to be a compatible neighbor with the Canal.

In addition, we will be using Park Service standards and guidelines in developing the design, because our ultimate intention is to give the completed memorial to the Park Service as a gift to the nation from the American people.

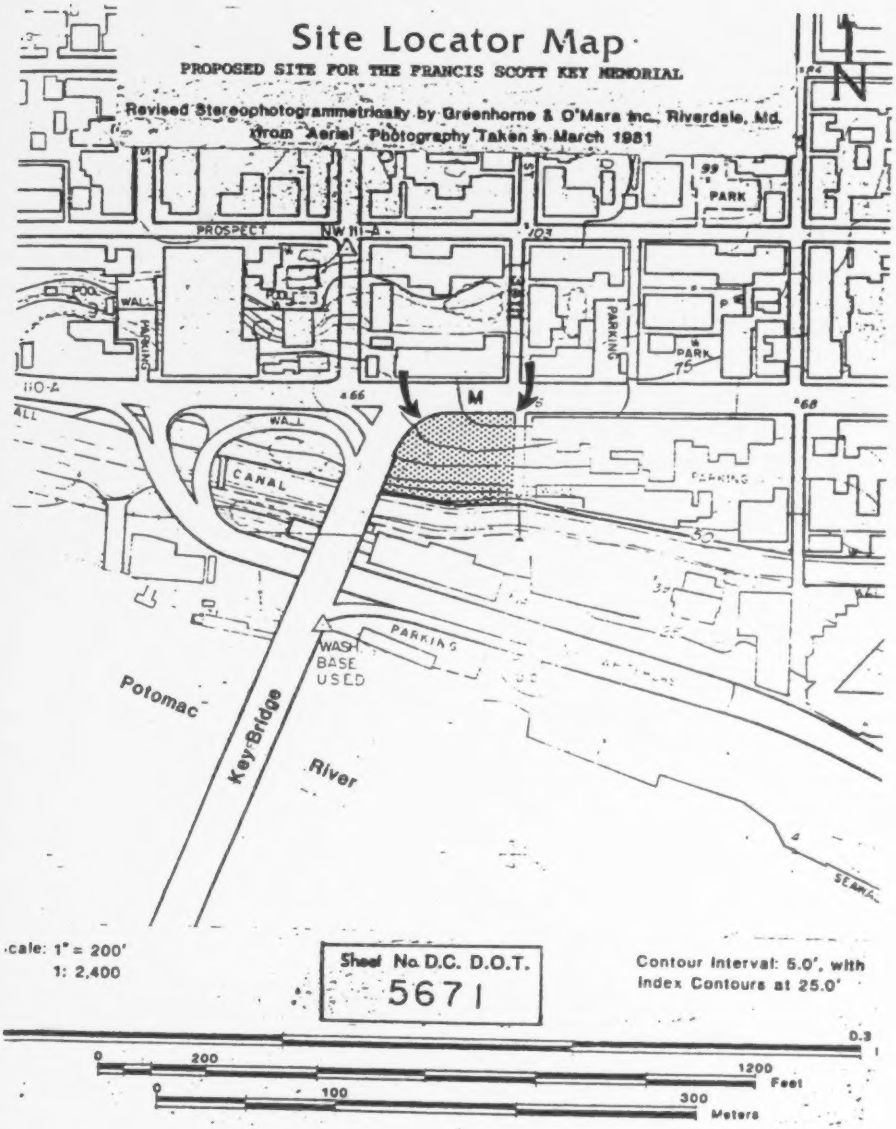
As you can see, there are a host of excellent reasons why our proposed site for the Francis Scott Key Memorial should be designated as the site, and we hope that the Subcommittee and the Congress will be able to support us in our efforts to obtain the authorization to create the Key Memorial at that site.

I want to again thank you for the opportunity to appear before you today on behalf of this very important piece of legislation. I have long believed that the lack of a memorial to Francis Scott Key here in this great city where he lived and worked and from which he travelled on his fateful mission of mercy which inspired the immortal words of our National Anthem is a tragic oversight, and one which should be rectified.

I urge that the Subcommittee vote in favor of S. 2370 and assist us in securing its passage by the Congress.

Thank you.

Kay Murphy Halle
Director
Francis Scott Key Park Foundation



Site Locator Map

PROPOSED SITE FOR THE FRANCIS SCOTT KEY MEMORIAL

Revised Stereophotogrammetrically by Greenhorne & O'Mara Inc., Riverdale, Md.
From Aerial Photography Taken in March 1981

cale: 1" = 200'
1: 2,400

Sheet No. D.C. D.O.T.
5671

Contour Interval: 5.0', with
Index Contours at 25.0'

N
PROSPECT
NW 11-A
PARK
POOL
WALL
PARKING
M
CANAL
PARKING
WASH BASE USED
Potomac
River
Key Bridge
SEAWA
0
200
1200
Feet
0
100
300
Meters
0.3

Senator MURKOWSKI. Thank you very much, Ms. Halle.

Our last witness will be Mr. T. Paul Imse, secretary and general counsel for the Francis Scott Key Park Foundation, Arlington, VA. Please proceed.

STATEMENT OF T. PAUL IMSE, JR., SECRETARY AND GENERAL COUNSEL, FRANCIS SCOTT KEY PARK FOUNDATION

Mr. IMSE. Good afternoon, Mr. Chairman. Thank you very much for this opportunity to appear before you and testify on behalf of S. 2370.

My name is T. Paul Imse, Jr., and I am the secretary and general counsel of the Francis Scott Key Park Foundation. I would like to briefly address how the proposed Francis Scott Key Memorial relates to the current concerns about memorials in general and make some suggestions of some minor technical changes to the pending bill.

First and foremost, I would like to point out that the proposed site for the Francis Scott Key Memorial is not within the downtown memorial core area, about which there is so much concern at the present time.

In addition, while it appears that the currently pending legislation relating to memorials will not apply to our proposal, the Foundation is confident, nonetheless, that the Francis Scott Key Memorial will meet the requirements of that legislation, in any event.

Through informal contact with the National Park Service, the Foundation is aware that the Park Service has problems with the 90-day approval period provided for in section 2(b) of the bill. This arises, as we understand it, from scheduling difficulties which are created by Gramm-Rudman-Hollings which have required a stretchout of meeting dates and so forth. The foundation understands and appreciates these limitations and certainly would have no objection to an extension of that period to a time that would allow sufficient review period and so forth so that this could be carried on in an orderly manner.

The foundation also joins with the Park Service in requesting that a provision relating to the maintenance and care of the memorial after construction be added to the bill. Suggested language for this amendment is contained in my prepared statement to the subcommittee, and I ask that that be included in the record.

Senator MURKOWSKI. Without objection, it will be included in the record.

Mr. IMSE. 1986 has been declared the "Year of the Flag" by Congress and the President. The foundation believes it would be most appropriate for the Congress to honor the father of our National Anthem during this Year of the Flag, by authorizing the establishment of a memorial to Francis Scott Key, and we ask that you act favorably on S. 2370 and assist us in its passage by the Congress.

Thank you very much, sir.

[The prepared statement of Mr. Imse follows:]

STATEMENT OF

T. PAUL IMSE, JR.
SECRETARY & GENERAL COUNSEL
OF THE
FRANCIS SCOTT KEY PARK FOUNDATION

IN SUPPORT OF

S. 2370 TO AUTHORIZE THE
ESTABLISHMENT OF A MEMORIAL
TO FRANCIS SCOTT KEY

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED
WATER AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

AUGUST 4, 1986

Good afternoon Mr. Chairman and Members of the Subcommittee. I very much appreciate this opportunity to appear before you today to testify on behalf of S. 2370, to authorize the establishment of a memorial to Francis Scott Key.

My name is T. Paul Imse, Jr., and I am the Secretary and General Counsel of the Francis Scott Key Park Foundation. This afternoon I would like to briefly address how the proposed Francis Scott Key Memorial relates to the current concerns about and the pending legislation dealing with memorials in general and to make some suggestions of some minor technical changes to the pending bill.

As this Subcommittee is well aware, there is currently substantial concern about the number of memorial proposals presently pending in the Congress and the limited amount of space remaining in the downtown memorial core area for the siting of additional memorials. As a result of this concern, there are currently two bills being considered by the Congress on this issue -- S. 2522 and H.R. 4378.

While the Foundation does not know what final form these bills may take when ultimately passed, it appears that these bills would not apply to our proposed memorial to Francis Scott Key because the proposed site is not on National Park Service or General Services Administration land. However, we are certain that our proposal would meet the requirements of those bills in any event. Clearly, our proposed site at the intersection of Key Bridge and M Street in Northwest Washington is NOT within the downtown memorial core area about which there is so much concern. The proposed site does meet locational relevance standards because it is the last open space near the site of Key's home and law office at the time he wrote "The Star Spangled Banner". It is less than 100 yards from where his home once stood. Francis Scott Key and the National Anthem are certainly subjects of enduring national historical importance worthy of memorialization, and Key, who died in 1843, has been dead for more than 25 years.

In this context, the Foundation believes it is appropriate to note that the Francis Scott Key Memorial was considered by the National Capital Memorial Advisory Committee on November 14, 1985. The Committee unanimously endorsed the concept of establishing a memorial to Key and went the further step of tacitly endorsing the Foundation's proposed site for the Key Memorial. A copy of an excerpt from the memorandum reflection the Minutes of that meeting of the Memorial Advisory Committee which relates to the Francis Scott Key Memorial is attached to my prepared statement, and I ask that it be made part of the record herein.

Through informal discussions with the National Park Service, the Foundation is aware that the Service has objections to the 90 day approval period provided for in Section 2(b) of the bill.

The Foundation understands that the budgetary constraints created by Gramm-Rudman-Hollings have affected the speed with which the Park Service, the Commission of Fine Arts and the National Capital Planning Commission can accomplish these reviews. The Foundation certainly understands and appreciates those limitations and would not object to an amendment to the bill which would provide for a longer review period -- say, 180 days -- in order to allow sufficient time for these reviewing authorities to carry out their function in an orderly manner.

While this may be attributable to an error on the part of the Foundation when the draft of this legislation was presented to Senator Murkowski, we would note that the bill contains no provision dealing with the question of maintainance of the memorial after it is built. Traditionally, legislation of this nature has contained such a provision. The Foundation understands that the Park Service would like to see such a provision added to the bill, and the Foundation joins with the Park Service in making such a request. The Foundation would suggest that the following new section could be added to the bill to accomplish this:

> "Sec. 4. The care and maintainance of the memorial erected under the provisions of this Act shall be the responsibility of the Secretary of Interior, or, if the memorial is erected on public grounds belonging to or under the jurisdiction of the District of Columbia, the Government of the District of Columbia."

Finally, and as a very minor matter, the Foundation would note that its legal name is "Francis Scott Key Park Foundation, Inc.", not "Incorporated" as stated in the bill.

In closing, I wish to urge that the Subcommittee act favorably on S. 2370 at an early date and assist in its passage by the Congress.

Thank you very much.

T. Paul Imse, Jr.
Secretary & General Counsel
Francis Scott Key Park Foundation

United States Department of the Interior

NATIONAL PARK SERVICE
NATIONAL CAPITAL REGION
1100 OHIO DRIVE, S. W.
WASHINGTON, D.C. 20242

L30(NCR-LUCE)

27 NOV 1985

Memorandum

To: Director

From: Regional Director, National Capital Region

Subject: National Capital Memorial Advisory Committee Meeting

On November 14, 1985, the National Capital Memorial Advisory Committee met and reviewed the following legislative memorial proposals.

Since the last meeting of the Advisory Committee in 1984, the Secretary of the Interior invited the Secretary of Defense to join with the Advisory Committee on all matters which would pertain to military memorials. The Secretary of Defense shared in our concern and welcomed the opportunity to work with the National Park Service in the area of military memorials. At this meeting Mr. Steven Kleiman of the Office of the Assistant Secretary of Defense, Manpower, Installation, and Logistics, was the designee for the Secretary of Defense.

The Committee adopted its revised criteria and guidelines that were published in the Federal Register on April 1, 1985. These guidelines have also been reviewed and approved by the National Capital Planning Commission and the Commission of Fine Arts.

* * *

11) H.J. Res. 435, Francis Scott Key Memorial

The Committee received testimony from the Francis Scott Key Park Foundation, Inc., and reveived a video film of the proposal. The Committee unanimously recommended favorably to the proposed legislation honoring the composer of our National Anthem, and felt that a memorial located in the vicinity of his home would be most appropriate. However, after reviewing H.J. Res. 435, the Committee observed that resolution was silent concerning the role of the Secretary of the Interior as to site and design approval, certification of funds for the construction of the memorial and responsibility for maintenance and care of the memorial after completion of construction. The Committee recommended that the legislation should be amended to include the role of the Secretary of the Interior.

Senator MURKOWSKI. Thank you very much.

I wonder if you could enlighten me on the status of the land now. I gather it is under the jurisdiction of the Washington governmental body as opposed to the Federal Government.

Mr. IMSE. Yes, sir.

Senator MURKOWSKI. In other words, it is within the District of Columbia; the District has jurisdiction over it, and it would be transferred over to the Park Service.

Mr. IMSE. That is our ultimate goal, sir, yes.

Senator MURKOWSKI. What would the District want in consideration for that?

Mr. IMSE. I really do not know. I do not know what kind of discussions the Park Service has had with the District directly related to that land. However, I do know that the Mayor specifically does support the construction of the memorial and has expressed support for the site, as well.

Just to put it in context, that land was transferred to the District in 1923 incident to the completion of the Key Bridge and the imposition of the responsibility for its maintenance on the District of Columbia. I could provide the citation for that if the chairman wants.

Senator MURKOWSKI. No. My concern is whether or not the Federal Government is likely to incur any financial obligation. And I gather that may not be the case, but I want to make sure because I gather that the funds that would be raised would be raised for the establishment of the monument.

Mr. IMSE. That is correct, sir.

Senator MURKOWSKI. I wanted to know if it also included whatever may be required to satisfy the District of Columbia if, indeed, they want consideration for transferring the land to the Park Service.

Mr. POWNALL. I have not given it any consideration whatsoever at this moment.

Senator MURKOWSKI. Well, let us assume for the sake of conversation that the District of Columbia wants some consideration. Do you expect an appropriation from the Federal Government, or do you anticipate raising whatever that may be from the private sector?

Mr. IMSE. That would be a possibility, Mr. Chairman. But I would think that another possibility may be an agreement between the District of Columbia and the Park Service for possibly some kind of a land swap, similar to what happened with the Georgetown Waterfront Park.

Senator MURKOWSKI. Where the Park Service would give up something it has to the District of Columbia?

Mr. IMSE. Yes, sir.

Senator MURKOWSKI. Do you intend to play a role in orchestrating this effort?

Mr. IMSE. Yes, sir.

Senator MURKOWSKI. I strongly suggest you go out and find an equitable arrangement and try and present it to the parties. That would expedite things dramatically.

Mr. IMSE. Well, another possibility, Mr. Chairman, is that the District of Columbia has very limited resources with respect to maintaining parks and so forth and may be more than willing, once they authorize the construction of one there, for the Park Service to take it over just so that they do not have to go to the expense of taking care of it.

Senator MURKOWSKI. Well, if you sat through much of the hearing the last 7 hours, you will know the chairman has tried to develop these kinds of arrangements virtually all day. I might have some success with your particular panel.

Mr. IMSE. Sir, I must admit I learned a lot more about Alaska than I knew when I walked in today.

Senator MURKOWSKI. Well, we trust that you will have an opportunity to visit our State. Come up and spend some money, keep us green. [Laughter.]

I very much appreciate your testimony. I certainly support the bill and look forward to addressing some of the mechanics to which obviously you people are committed and dedicated and perfectly capable of resolving, but I think you will find that it does have the support of my colleagues.

I wish you a good day and thank you for your testimony.

Mr. IMSE. Mr. Chairman, how long will the record remain open?

Senator MURKOWSKI. The record will remain open for 2 weeks from today.

Mr. IMSE. Thank you very much, Mr. Chairman.

In addition, I would note that I have statements that I have been asked to deliver to the committee by the Advisory Neighborhood Commission in Georgetown, the Citizen's Association of Georgetown, and by Mrs. Betty Jane Gerber. And I believe a statement was previously supplied by the Business and Professional Association, and I would ask that those be part of the record.

Senator MURKOWSKI. We are happy to include those in the appendix portion of the hearing record.

We wish you a good day.

Thank you for bearing with us, and I want to thank the court reporter, whose name is Jane Beach, for bearing with us. You have done an extraordinary job, and we are most appreciative.

We wish you all a good day.

[Whereupon at 5:03 p.m. the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Alaska Center for the Environment
Suite 1A
411 West 4th Ave.
Anchorage, Alaska 99501 274-3621

September 18, 1986

Chairman, Public Lands
Reserved Water and Resource Conservation Subcommittee
Senate Energy and Natural Resource Committee
Room SD-308
Washington, D.C. 20510

RE: Statement on S. 485, To Amend Section 901 of the Alaska National Interest Lands Conservation Act of 1980

Dear Chairman:

The following is a statement of the Alaska Center for the Environment on S. 485, which would amend Section 901 of the Alaska National Interest Lands Conservation Act of 1980.

Other groups have described in detail the very generous and distinctive land grants made by the federal government to the State of Alaska and to Alaska's Native peoples. Without in any way questioning the wisdom of those grants, it is not unreasonable, however, to take serious exception to the granting of additional lands that would result from passage of S. 485. Large numbers of inholdings already exist inside the conservation units established or expanded by ANILCA. Attempting to manage the problems posed by these inholdings is one of the major tasks facing Alaska's federal land managers. Exacerbating these problems by ratifying a unilateral administrative change in a surveying policy which had worked perfectly well in Alaska for many years makes little sense.

But the Sierra Club, The Wilderness Society and others have persuasively stated these and additional arguments, and we fully support their statements. We would like to focus on a concern about which the Alaska Center for the Environment has special knowledge because of its extensive work on state land use issues, which is the manner in which the State of Alaska is likely to manage the additional lands that it would receive under S. 485.

The State of Alaska, in particular its land manager, the Department of Natural Resources, has repeatedly said and/or implied that the reservations made by ANILCA are ample, and that state land managers need not pay serious attention to concerns such as buffering or otherwise mitigating the adverse impacts on federal lands of state land use decisions. Futhermore, the State has for a number of years pursued an aggressive land disposal or privatization program under which state public lands are removed from the public domain and sold into private hands. This program has resulted in disposals which are certain to have substantial impacts on valuable federal conservation units. Examples are disposals inside Wrangell-St. Elias National Park, in Prince

William Sound, and at the gateway to Denali National Park (which will contribute to the further "West Yellowstoning" of the latter area).

The land grants made to the State of Alaska and to Alaska's Natives were fair and reasonable. Additional grants would not be in the best interests of most Alaskans, of other Americans, or of the important conservation units established by ANILCA.

Thank you for the opportunity to offer this statement for the record.

Sincerely,

Cliff Eames

Cliff Eames
Issues Director

CE:dgh

SIERRA
CLUB
330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB
FOR THE HEARING RECORD ON
S.485, TO AMEND SECTION 901 OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
WASHINGTON, D.C.
AUGUST 4, 1986

S. 485 would ratify a 1983 attempt by former Interior Secretary James Watt to let the State of Alaska and Alaska Natives select hundreds of thousands, perhaps millions of acres of federal land, over and above their original grants from Congress, in the course of the Interior Department's conveyance of submerged land selections to the Natives and the State.

Submerged lands refers to the acreage under lakes and streams that are within tracts of federal land selected by the State and Alaska Natives under the Alaska Statehood Act of 1958 and the Alaska Native Claims Settlement Act of 1971 (ANCSA), respectively. The State has selection rights to 105.6 million acres, while the ANCSA grant is now estimated to total 47-48 million acres (USDOI, 1984).

Reversing long-standing Interior Department policy, Watt decided not to charge the State and Natives for acreage under lakes 50 acres or larger and rivers 198 feet wide or wider within State and Native selection tracts. Prior to his action, all underwater acreage was charged against the respective grants when the waterbody was determined to be non-navigable by the BLM. If found navigable, the acreage was automatically State-owned under the Submerged Lands Act and not counted against either the Native or the State grant.

BLM's navigability/non-navigability determinations were--and are--subject to court challenges. If, for example, the State successfully overturns a non-navigability finding for a lake within a Native selection, the submerged acreage is conveyed to the State pursuant to the Submerged Lands Act, and the Native corporation selects other federal lands instead. The State can also contest non-navigability decisions for waterbodies within state selections. Native corporations can also attempt to overturn a BLM determination.

Under Watt's decision, waterbodies of the size noted above are not subject to BLM navigability determinations; they are simply segregated from the federal lands eligible for State and Native selection. But the acreage under these large waterbodies is not, however, retained in federal ownership; it is owned by the State and Native corporations pursuant to the doctrine of riparian rights.

The basis for this new policy is the Department's Manual of Instructions for the Survey of Public Lands of the United States (1973), which is used in other states to segregate large waterbodies from federal lands to be conveyed. In Alaska, the Manual had never been applied because the Interior Department had interpreted Congress's intent as requiring that submerged lands under non-navigable waterbodies be charged against Native and State land grants. That intent was reaffirmed in Section 901 of ANILCA.

In announcing his new policy, Watt boasted that the effect would be to transfer an estimated 1-2 million acres of additional land to the Natives, and another 4-6 million to the State.

His action radically altered long-standing Interior Department policy without providing adequate notice and opportunity for public comment, and without complying with NEPA. Given his admission that the impact of his action was the conveyance of millions of acres of additional federal land to the State and Natives, an environmental impact statement statement was obviously required.

Most importantly, because Section 901 requires that State and Natives be charged for land selected under all waterbodies found to be non-navigable by the BLM, the former Secretary's action was illegal on the face of it. In response, the Wilderness Society and the Sierra Club filed a lawsuit that is now before the Washington, D.C. Circuit court of Appeals.

Meanwhile, the Interior Department is conveying Native and state selections using Watt's policy, and all previous conveyances are being recalculated accordingly. If the conservationists ultimately prevail in the courts, Interior would have to revise the conveyances again, at considerable public expense.

S. 485 would moot the lawsuit by amending Section 901 to conform with Watt's submerged lands policy.

Existing Law--The Submerged Lands Provision of the Alaska Lands Act

Section 901 of the Alaska National Interest Land Conservation Act of 1980 (ANILCA) is a submerged lands formula that resulted from negotiations among the State, Natives, Department of the Interior, and the Alaska Coalition of conservationists. The provision is designed to protect the ANCSA land base from shrinkage, and to bring certainty to Native submerged landowners by limiting the amount of time the State (or other parties) have to file lawsuits contesting the conveyances.

Sec. 901 protects the Native (ANCSA) land grant from net shrinkage due to successful State court cases against Native submerged land ownership by providing that any losses will be made up from other federal lands.

The section provides certainty of ownership by giving the State five years after the date of a conveyance of submerged lands to a Native corporation in which to challenge the BLM's non-navigability determination and hence Native ownership of the submerged lands. (The state has 7 years for conveyances made prior to ANILCA). There is no time limit on state challenges to BLM non-navigability findings for state land selections.

Prior to ANILCA, there was no requirement mandating replacement lands, and no time limit on court challenges. There was built-in uncertainty for Natives owning submerged land; they faced the possibility of loss of their submerged lands at any time in the future, and hence a possible net reduction in their ANCSA land entitlement.

Section 901's time limit, or "statute of limitations" as it is called, also insures that qualified replacement lands will be available. Successful state challenges decades hence might leave the Native corporations with an insufficient federal land base in which to find suitable replacement lands, simply because of the disposition of the federal lands in the intervening years.

Another advantage of the limitation is the finality in land status it brings to federal land managers. Once the deadline is passed, there is no longer any need to replace any submerged lands lost to the State with other federal lands.

State Abandons the ANILCA Submerged Lands Agreement

Although the State participated in the negotiations leading to Section 901, and supported its inclusion in the Act, soon after enactment it reneged and filed suit challenging the statute of limitations as unconstitutional. Sportsmens' groups in Alaska, who were responsible for the State's flip-flop, were angered over the State's willingness to accept any limit on its ability to contest Native ownership of submerged lands.

Interested primarily in public access and use of lakes and rivers within Native selections, the sportsmen seek successful state challenges that would give the State ownership of the lands underneath these waterbodies. State ownership would give the public access to lakeshores and riverbanks below mean high water, i.e., some portion of the banks and all of the beds.

Now the State says it "...must begin to file lawsuits after December 2, 1986, to assert its claims to navigable (sic) waterbodies that have been conveyed to Native corporations, or lose the right to claim title." A "large number of cases" would be brought each year under the current time limit of ANILCA. (Testimony of John W. Katz, August 4, 1986).

Congress has already extended the time limit by one year in legislation passed this year. The State's preferred solution is to eliminate the time limits of Section 901 altogether, as proposed in S. 485, although the State would then be subject to the 12-year limit in the Quiet Title Act of 1972.

S. 485 would also adopt the Watt chargability formula for State lands. This would amount to substantial icing on the cake for the State. Prior to Watt's 1983 action, the State never questioned the Department's 24-year policy for the conveyance of State land selections; the State simple reserved the right to challenge a BLM non-navigability determination at any time in the future. S. 485 would convey the lands under lakes 50 acres or larger and rivers 198 feet or wider without regard to navigability, and not charge the acreage against the State's land grant.

S. 485's Impact on the Federal Lands

For both the Native corporations and the State, passage of the bill would result in a net increase in their land grants by an amount equal to the total acreage underlying the 50-acre or larger lakes and the 198 feet wide or wider rivers. The bill does this by conveying title to these lands but not charging the acreage against the respective land grants. If the State later succeeded in taking over some of the Natives' submerged lands under these large waterbodies, the replacement provision of Section 901 of ANILCA guarantees that the loss would be temporary.

There have been only two estimates of the amount of federal land that would be conveyed to the Natives and the State if S. 485 is adopted or if the federal court upholds Watt's formula. Former Secretary Watt, as noted above, estimated 1-2 million acres would be added to the Native land grant and 4-6 million acres to the State's total.

According to an analysis by the Alaska Department of Natural Resources, an additional 838,000 acres would be conveyed out of federal ownership--460,000 acres to the State, and 278,000 acres to the Natives. However, the State's study obviously cannot be relied upon as a disinterested assessment of the issue. Also, the study's conclusions are thrown into question by a flawed methodology.

Even assuming that the S.485-Watt formula resulted in "only" a 838,000-acre loss of public lands, this would be 838,000 acres too many. In many cases, the additional Native selections would come from existing national conservation system units, especially the national wildlife refuges. These new inholdings could be subject to uses incompatible with the congressionally mandated purposes of the surrounding federal lands. With significantly large inholdings in several units already, it decidedly is not in the public interest to magnify the inholding problem.

Conveyance of additional hundreds of thousands, perhaps milllions of acres of federal land to the State would further balkanize the BLM's land management units in Alaska and impose State land use policies that emphasize land disposals and extractive uses at the expense of conservation objectives. For example, State ownership automatically precludes wilderness reviews that BLM is otherwise authorized to undertake.

Recommendations

We strongly oppose the bill's adoption of the Watt solution on chargability, and we urge the Committee to allow the federal courts to settle the legality of his action.

The basic issue in the lawsuit is Congress's intent with regard to chargability of submerged lands conveyed under ANCSA and the Statehood Act. The Reagan administration alleges that Congress never intended to charge submerged lands under non-navigable waters against the respective land grants. Sierra Club and the Wilderness Society argue that Congress did so intend, and that Interior's chargability policy for state selections since 1959 (Alaska admitted to the Union), and for Native selections since 1971 (ANCSA) was correct and reaffirmed in ANILCA.

We note that the State implicitly agreed with Interior's earlier policy, as shown by the State's silence on the chargability question until 1983, when it joined the Alaska Federation of Natives in embracing the Watt revision.

The Natives, although opposing Interior's 1972-83 chargability policy, were unable to persuade the Nixon-Ford and Carter administrations, or Congress to change it. Nor did the Natives contest that earlier policy in the courts. Now that the Reagan administration has adopted their preferred position, and conservationists have sued, the issue of Congressional intent should be left for the federal courts to decide.

On the statute of limitations issue, we urge the Committee to regard with skepticism the State's assertion that each year for the remainder of the current time limit it will bring "a large number of cases." Alaska Natives enjoy political influence sufficient to encourage any Governor contemplating multiple lawsuits to have second thoughts. The present governor, for example, is counting on the "Bush" vote to carry him into a second term. Also, most of the Native submerged lands will have little attraction for the State, because they will not contain mineral resources or be waterways the public used prior to ANCSA.

Another reason why blanket lawsuits by the State are unikely is that Section 901 provides that in the event the State loses it pays the legal costs of the defendants. As shown by the State's recent challenge to a segment of the Tazimina River, there will probably be numerous defendants in cases involving the navigability of rivers, including the federal government. This is because "applicable case law requires that navigability litigation requires that navigability litigation be brought on the entire river system," even though the State may be interested, as in the Tazimina case, in only a segment of the river. (Ibid).

We recommend that the State be granted another one-year extension on the condition it cooperate with Congress in good faith, as contrasted with its previous performance after ANILCA was enacted. The State should be asked to pursue its submerged land review, decide which Native-owned submerged lands it feels it needs to own, for whatever reasons, and proceed with litigation. According to the Alaska Department of Natural Resources, all of the Native submerged lands could be examined in two years.

In summary, the Committee should insist that the ANILCA process for submerged land conveyances be allowed to work.

Thank you for the opportunity to submit this statement.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

August 4, 1986

The Honorable Malcolm Wallop
Chairman
Senate Subcommittee on Public
Lands, Reserved Water and
Resource Conservation
308 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the State of Alaska, I want to submit the following comments regarding S.1330 which would allow expanded mineral exploration of the Admiralty Island National Monument.

The state supports expanded exploration at the Greens Creek site on Admiralty Island. The mine is expected to contribute an annual payroll of $13 million to the economy of Southeast Alaska and will provide the nation with gold, silver, zinc, and lead. S.1330 would enhance the economic viability of the mine by extending the time period under which claims could be explored and patented.

While S.1330 does not try to resolve other land status problems in Southeast Alaska, I would like to take this opportunity to identify state concerns that surfaced during deliberations by the House of Representatives on H.R.4883, which constitutes a more comprehensive approach.

First, valid state selections are property interests which are protected under federal law. Proposals for a comprehensive resolution of land status problems should not involve acreage which has been validly selected pursuant to the Alaska Statehood Act. Legislative history could be used to clarify this point.

Second, while I understand the desire to minimize litigation over activities conducted under a comprehensive bill, limits to judicial review should be focused upon the exchange and conveyance of lands, not post-conveyance activities. The state should not be limited in its ability to assert valid interests on behalf of the public. H.R.4883 ultimately addressed this issue satisfactorily.

Third, if funds are required to reach a settlement, such funds should not be taken from either the Forest Highway Fund or the Tongass Timber Supply Fund. H.R.4883 provides for the construction of a road on Baranof Island as part of Shee Atika's compensation for relinquishing its Admiralty Island land. We understand that the proposed road could be difficult to construct due to the terrain. If the Forest Highway Fund were used for this project, it would divert funds from other important projects in the state for several years. The Tongass Timber Supply Fund was intended to make timber available in order to maintain employment in the industry which depends upon the National Forest at pre-1980 levels. It would be inappropriate to use these funding sources for the purposes of this act. H.R.4883, ultimately addressed these concerns to the state's satisfaction.

Fourth, the state should be provided an opportunity to comment on easements on lands transferred to Shee Atika and Sealaska Corporation. State involvement is needed to safeguard the public interest by assuring adequate access to adjacent public lands and resources. It should be noted in this regard that state participation in the reservation of public easements does occur routinely under Section 17(b) of the Alaska Native Claims Settlement Act.

Fifth, future state land selections are unlikely to significantly diminish the timber base of the Tongass National Forest. The state has generally selected lands for community expansion and recreation, rather than for their timber value. Moreover, the state has chosen much of its entitlement to National Forest Lands from the Chugach National Forest. For these reasons, we oppose any measures which would link the future status of National Forest Lands to the state land selection process. I have enclosed a discussion of the effect of state selections on the timber base for your information.

The above comments reflect state concerns which have arisen to date. Since the comprehensive settlement is still evolving, I may wish to offer further remarks as its provisions become more definite.

Thank you for considering the views of the State of Alaska.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

Enclosure

STATE OF ALASKA
OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION

BILL SHEFFIELD, GOVERNOR

CENTRAL OFFICE
POUCH AW
JUNEAU, ALASKA 99811-0165
PHONE: (907) 465-3562

SOUTHEAST REGIONAL OFFICE
431 NORTH FRANKLIN
POUCH AW, SUITE 101
JUNEAU, ALASKA 99811-0165
PHONE: (907) 465-3562

SOUTHCENTRAL REGIONAL OFFICE
2600 DENALI STREET
SUITE 700
ANCHORAGE, ALASKA 99503-2798
PHONE: (907) 274-1581

NORTHERN REGIONAL OFFICE
675 SEVENTH AVENUE
STATION H
FAIRBANKS, ALASKA 99701-4596
PHONE: (907) 456-3084

May 28, 1986

The Honorable John F. Seiberling
Chairman, Public Lands Subcommittee
Committee on Interior and
  Insular Affairs
U.S. House of Representatives
1225 Longworth House Office Bldg.
Washington, D.C. 20515

Dear Congressman Seiberling:

During my presentation of the State of Alaska's testimony at the Tongass oversight hearing on May 8, 1986, two questions were raised by members of the subcommittee which require some follow-up. This letter has been prepared on behalf of the state in response to those questions.

UNEMPLOYMENT IN ALASKA

One question related to unemployment in Alaska. The Alaska Department of Labor has provided the following statistics which were compiled in accordance with federal guidelines. In 1980 the labor force in Alaska totalled 188,000 people, with 29,327 people constituting the labor force in southeast Alaska. Statewide unemployment in 1980 was 9.6 percent of the labor force, or 18,000 workers. In southeast Alaska, the 1980 unemployment rate was 9.2 percent of the regional labor force, or 2,694 people.

In 1985 the Alaska statewide labor force was 252,000 people, with 32,191 people constituting the labor force in southeast Alaska. Unemployed workers in the statewide labor force totalled 24,000 people, or 9.5 percent. In southeast Alaska, 10.2 percent of the regional labor force, or 3,288 unemployed people were seeking work. These statistics do not, however, account for those who have left Alaska and are no longer considered part of the Alaska labor force.

Direct employment in southeast Alaska sawmills declined 45 percent between 1980 and 1985. During the same five year period, pulpmill employment dropped by 42 percent. Logging employment experienced a somewhat smaller reduction of 20 percent, due in part to increased logging activity on private land.

STATE LAND SELECTIONS

The subcommittee's other question concerned the status of land selections made by the State of Alaska pursuant to Section 6(a), Alaska Statehood Act. We believe that this question may have arisen from concern for the ability of the Tongass Forest timber base to accommodate an off-Admiralty settlement with Shee Atika, Incorporated and possible land exchanges involving the Goldbelt and Haida Corporations and the Forest Service, as well as concern for possible impacts on access to, and use of, adjacent federal uplands. At statehood, Congress granted Alaska 400,000 acres of national forest land for the purposes of furthering the development of and expansion of communities. Qualifying land was to be vacant and unappropriated at the time of its selection, and either adjacent to established communities or suitable for prospective community centers and recreational areas. This grant was made prior to enactment of the Alaska National Interest Lands Conservation Act (ANILCA), the Alaska Native Claims Settlement Act (ANCSA), the National Forest Management Act (NFMA), and before the Forest Service adopted the Southeast Area Guide, the Alaska Regional Guide, or the Tongass National Forest Land Management Plan (TLMP) and its pattern of land use allocations.

The Statehood Act provided that selected land was to be conveyed by the federal government to the State of Alaska subject to valid rights, including timber sale contracts, which existed at the date of selection. Where such rights have been properly identified by the Forest Service (as managing agency), and the Bureau of Land Management (as conveying agency), the State of Alaska respects those rights as it is required to do by the Alaska Statehood Act. Following is a tabulation by the Alaska Department of Natural Resources of the current status of national forest land selections authorized by Section 6(a), Alaska Statehood Act:

STATUS OF SELECTED NATIONAL FOREST LAND	CHUGACH NATIONAL FOREST (acres)	TONGASS NATIONAL FOREST (acres)	TOTAL ACRES
Conveyed to State	41,500	143,200	184,700
Forest Service approved, but not conveyed	51,500	30,900	82,400
Selection filed, but no action by Forest Service	15,100	18,000	33,100
Selections in litigation (Alaska v. Block)	29,800	22,400	52,200
TOTALS	137,900	214,500	352,400

In addition to the land described above which has been formally selected, the State of Alaska has identified a pool of additional acreage in both national forests for possible future selection. Through an extensive public involvement process in 1983, 36,200 acres of the Tongass National Forest and 110,800 acres of the Chugach National Forest were identified. No decision has yet been made regarding these or other possible selections, as the state has until 1994 to exercise its remaining entitlement.

We have reviewed the Forest Service analysis of state land selection impacts on the commercial timber base of the Tongass Forest, and offer the following comments:

When the Forest Service adopted the TLMP in 1979, it accounted for the reduction of the Tongass land base due to approved state selections made through 1977, or 153,104 acres. It did not, however, further reduce the Tongass land base by the total amount of the state's remaining entitlement or allocate the full entitlement proportionately between the Tongass and Chugach Forests based on selections made through 1977. In 1977, state selections in the Tongass Forest accounted for 60 percent, and Chugach Forest selections were 40 percent, of the total national forest acreage filed. The Forest Service's assumption in 1979 that three-quarters of the state's entitlement would be selected on the Chugach Forest was not supported by the available evidence. A similar pattern of state selections filed since 1979 further demonstrates the inappropriateness of the Forest Service assumption. The magnitude of state land selections in the Tongass National Forest was therefore substantially underestimated by the Forest Service when important land allocation questions were being considered by Congress.

The Forest Service reversed its 1979 TLMP assumption when it assumed on page 14 of its 706(b) report that the state would utilize its entire remaining entitlement of 92,400 acres in the Tongass National Forest. By the state's calculation, however, 47,600 acres of selection entitlement remain if all land which has already been selected is ultimately conveyed. (The Forest Service apparently assumes a larger remaining entitlement, despite a federal district court ruling in Alaska v. Block which was favorable to the state. If selected land in Alaska v. Block, plus selections which have not been acted on by the Forest Service are counted, the remaining entitlement is 47,600 acres.) It is inconceivable that the state would obtain its entire remaining national forest entitlement solely from the Tongass Forest. As previously noted, 36,200 acres in the Tongass and 110,800 acres in the Chugach were identified as a pool of land for possible future selection by the state. Undoubtedly, state priorities could change between now and 1994, but the Forest Service scenario is most unlikely.

In assessing the impact of state land selections for the 706(b) report, the Forest Service also assumed that, under continued federal management, 12 percent of the available timber base would be retained for wildlife and fisheries habitat protection, visual screening, etc. In contrast, the 1979 TLMP assumed a retention factor of 30 percent in land use designation (LUD) III, and 13 percent in LUD IV. The analysis of any selections within either of these TLMP land use designations would therefore have been properly assigned a higher retention factor under continued federal management and would have reflected a smaller impact on the timber base.

The Forest Service also assumed that 50 percent of the selected acreage in the Tongass Forest, under continued federal management, would have been available for timber harvesting. By far the largest acreage of national forest land selected by the state has been in close proximity to existing communities, or in areas with popular recreational values for adjacent communities. We believe, therefore, that continued Forest Service management in these locations would likely have resulted in a reduced level of timber harvesting and a greater emphasis on protecting visual and aesthetic values. In other words, under continued federal management the percentage of land considered to be available for harvesting would be lower than assumed by the Forest Service. We conclude that the Forest Service in its 706(b) report has overestimated the impact of state land selections on the timber yield of the Tongass National Forest.

Another aspect of state land selections and their potential impact on timber harvesting in the Tongass Forest was raised during the oversight hearing. The concern is that state land selections may block access to federal uplands. Before turning to state selected uplands, it should be understood that much of the Tongass Forest adjoins state-owned tidelands. Many tideland locations have been utilized since statehood by the Forest Service and the timber industry, with state authorization, to access and remove federal timber. State tideland leasing for timber transfer facilities, etc., is an ongoing process very familiar to the Forest Service. The State of Alaska utilizes a streamlined consolidated permitting process to ensure that state permits and authorizations are handled expeditiously while providing for adequate protection of other public interests.

The State of Alaska has an established process for planning, classification, and management of state-owned uplands which affords the Forest Service and others adequate opportunity to have their needs and concerns for upland access addressed. This process has recently permitted the resolution of several federal access issues where state uplands adjoin the national forest. And finally, purchasers of national forest timber, and others with valid rights which existed at the time the land was selected by the state are protected by the terms of Section 6(a), Alaska Statehood Act.

Thank you for this opportunity to provide the supplemental information requested by the subcommittee. Also enclosed for the record is a copy of the finalized document which the State of Alaska referenced at page 88 of the 706(b) report entitled Status of Measures to Protect Fish and Wildlife in the Tongass National Forest; Alaska Department of Fish and Game, February 1986.

Sincerely,

Craig J. Lindh

Craig J. Lindh
Project Analyst

Enclosure

cc: Representative Young
Representative Darden
Representative Marlenee
Michael Barton, U.S. Forest Service, Juneau
Attorney General Brown, Law, Juneau
Commissioner Wunnicke, DNR, Juneau
Commissioner Collinsworth, DFG, Juneau
Commissioner Robison, DOL, Juneau
John Katz, Office of the Governor, Wash. DC
Robert L. Grogan, DGC, Juneau

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

August 18, 1986

The Honorable Malcolm Wallop
Chairman
Senate Subcommittee on Public
Lands, Reserved Water and
Resource Conservation
308 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the State of Alaska, I want to submit these additional comments regarding S.1330 which would allow expanded mineral exploration of the Admiralty Island National Monument. These comments address the Haida Corporation's proposed land exchange with the U.S. Forest Service, which the state is currently reviewing.

As you know, the State of Alaska strongly supports the survival and economic health of corporations created under the Alaska Native Claims Settlement Act. We have worked closely with many village and regional corporations on a variety of land exchange proposals and on economic development matters.

It is our understanding that the U.S. Forest Service opposes the land exchange proposed by the Haida Corporation on the basis that future state selections may reduce the amount of available timber from the National Forest and hinder the agency's ability to offer timber sales as required by Section 705 of ANILCA. We believe that it is highly unlikely that future selections will have this consequence. The state generally selects lands for the purposes of community expansion and recreation. Some of these lands are timbered; however, the state has expressly avoided selecting land for its timber value alone. For your information, I have enclosed a discussion of the effect of state selections on the allowable cut provided in Section 705 of ANILCA.

The above comments reflect state concerns to date. Since the exchange legislation is still evolving and under review, I may want to offer further remarks at a later time.

Thank you for considering the views of the State of Alaska.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

Koniag, Inc.

July 29, 1986

Tony Bevinetto
Committee on Energy & Natural Resources
U.S. Senate
Washington, D.C. 20510

Dear Mr. Bevinetto:

Enclosed is Koniag, Inc.'s written testimony on the 1991 amendments to ANCSA which is being submitted for the hearing scheduled in Washington, D.C. on August 4th.

Please note that we have previously submitted our comments to the House Committee and U.S. Senators.

Sincerely,

KONIAG, INC.

Debbie Hunter

Debbie Hunter
Executive Secretary

dh

Anglo Energy Building • 4300 B Street, Suite 407 • Anchorage, Alaska 99503 • (907) 561-2668 • Telecopier: 562-5258

Koniag, Inc.

File copy

July 1, 1986

Senator Frank H. Murkowski
Chairman
Public Lands Subcommittee on
Energy and Natural Resources
United States Senate
709 Hart Building
Washington, D.C. 20510

Re: Senate Bill No. 2065
A Bill to Amend the Alaska
Native Claims Settlement Act

Dear Senator Murkowski:

As I indicated to the Committee when I had the opportunity to appear before it at its hearings on S. 2065 in Anchorage, Alaska on May 27, 1986, my testimony as President of Koniag, Inc., one of the twelve Alaska Native Regional Corporations, was limited to two issues as to which Koniag had very strong feelings and that because the Board of Directors was then in the process of an extensive review of the other provisions of S. 2065, I was not able to convey to the Committee the position of Koniag, Inc. on the other issues raised by S. 2065. We have now completed that review and we would appreciate it if this letter could be included in the record of such hearings as the supplemental comments of Koniag, Inc. on S. 2065.

The issues sought to be addressed by S. 2065 are of vital importance to Koniag, Inc. and its shareholders. In its review of S. 2065, the Board of Directors has also reviewed the amendments to H. R. 4162 being proposed by the Alaska Federation of Natives ("AFN"). Because the AFN is going to seek similar amendments to S. 2065, I have taken the liberty of communicating our position on those amendments as well. Koniag is deeply troubled by the proposed AFN amendments in that they reflect a very obvious bias which is not the position of all Alaska Natives, and if adopted, will severely limit the ability of the Corporations to address the problems facing them.

Alaska is a very diverse State. The Corporations created under ANCSA are no less diverse than the State.

Anglo Energy Building • 4300 B Street, Suite 407 • Anchorage, Alaska 99503 • (907) 561-2668 • Telecopier: 562-5258

There is a wide range of expectations of their shareholders. ANCSA recognized that diversity in adopting the principle that there should be maximum participation by the Alaska Natives "in decisions affecting their rights and property." This participation was in a large degree afforded by the various Corporations created under ANCSA. It is that principle of participation that should be reflected in the pending legislation. Each Corporation must have the ability to chart its own course for the future in addressing the issues facing its shareholders, guided by the needs and expectations of its shareholders and not by philosophical biases of other groups no matter how well intended they may be.

Koniag, Inc. is unique in that it has a high percentage of its Native shareholders who are not pursuing a traditional lifestyle. However, Koniag also recognizes that its course for the future may not be the same as that which the Village Corporations in the Region may choose for themselves. By the same token, what may meet Koniag's needs may also not be best for the other Regional Corporations. For this reason, Koniag seeks no mandatory requirements which are applicable to all Corporations, except those which are necessary to protect the basic rights of the shareholders from a vocal minority.

Restrictions on Stock

Koniag supports the options presently afforded by Section 4 of S. 2065 with respect to the continuation of the restrictions on voting and alienability of the stock of the Corporations. That provision allows the Board of Directors the choice as to when and how a change in those restrictions might occur.

Koniag also supports the provision of Section 8 of S. 2065 which provides that the restrictions on Village Corporation stock will continue until removed by a vote of its shareholders. Village Corporations are significantly different than Regional Corporations. By-in-large they hold title to the surface estate of lands which are used on a day-to-day basis by their shareholders. By definition they have no shareholders who are committed to living in urban areas and have no intention of returning to a more traditional life. ANCSA reflected this further by basically charging the Regional Corporations to be the more business oriented entities in the settlement.

Because of the differences between the Regional and Village Corporations, the Board of Directors of the Regions must have the flexibility to address the continuation or removal of the restrictions on their stock which would be reflective of the desires of their shareholders, the people who elected them.

Koniag strongly opposes the AFN proposal which would limit the choice of the Board of Directors as to the manner in which the question of the continuance or removal of the restrictions may be placed before the shareholders for a vote.

Bristol Bay Native Corporation has obtained for itself through Section 6 of S. 2065 an opportunity to address the issue of the restrictions in a manner other than that provided in Section 4. Several other Regional Corporations have now also indicated their desire to have the same option. Because of Koniag's desire to afford its shareholders the maximum options to address these fundamental issues, it, too, would like to have the same option as afforded BBNC. While it is too early to say this will be the path Koniag will choose to follow, there are many reasons why the Bristol Bay Option may meet the needs of the Koniag shareholders.

Inheritance of Native Common Stock

Section 4(3) of S. 2065 permits general inheritability of Native Common Stock. The AFN proposed amendments would limit this right to inherit the restricted stock to only Natives or descendants of Natives. Koniag believes the AFN's amendment goes too far. While Koniag believes in principle that so long as the stock is restricted, its ownership should be limited to Natives and their descendants, Koniag supports a revision to the AFN language which would allow a non-Native spouse to inherit restricted non-voting stock. This revision recognizes the reality that presently exists - many Natives are married to non-Natives and they should be allowed to leave their stock to their spouses to provide income for them during their lives. Upon the death of such non-Native spouse, the stock would escheat to the Corporation if it is not inherited by a Native of Native descendant. To provide the Corporation with a right to acquire the stock by purchase from a non-Native who has inherited it, is an illusory option -- the Corporations simply won't have the money to exercise it and since the non-Native has no real connection with the Native Corporation, to require the Corporation to purchase it, simply results in a windfall to a person who was never intended to benefit from ANCSA - a windfall at the expense of those who should benefit.

New Shares

Section 3 of S. 2065 provides for an amendment to Section 7(g) of ANCSA by adding subsections 2A and 3 which provide that a Corporation may amend its articles to provide for the issuance of additional stock to Natives who are 65 years of age and older. It is our understanding that the intention of this provision is to provide a benefit to the elderly. To give an elder person another piece of paper that doesn't pay dividends and cannot be sold is hardly a benefit. In fact the only party who would probably benefit from this provision would be the attorneys who are paid to draft the elaborate provisions required to issue the stock.

Koniag would strongly support a provision which would allow Corporations, if their shareholders so choose, to amend its articles to provide for a cash distribution to its elderly shareholders either through granting a right to make direct payments to the elderly or by allowing shares held by them to carry special dividend rights.

Shareholder Petitions

Koniag supports the existing provisions of S. 2065 in Section 4 (amending Section 6(A)(i)(e) of ANCSA) which allow one-third of the shareholders to petition for a vote on an amendment to the Articles to address either stock restrictions or the transfer of assets authorized by the legislation. That petition is prohibited from including false or misleading statements and would have to be pre-filed with the Corporation and the State before circulation.

We believe these provisions to be essential for the protection of the shareholders' rights. The action contemplated is significant and the cost to the Corporation of addressing the issue in response to a petition is considerable. While the number of signatures required should not be unattainable, it nevertheless should be indicative of strong shareholder support. We believe the one-third requirement achieves this. We strongly disagree with the AFN proposal which sets the requirement on petitions dealing with removal of the stock restrictions at one-third yet drops the requirement to 15% to initiate an asset transfer. Both actions are significant, major actions to be taken by the Corporation. The transfer of the assets of the Corporation without consideration (a gift, if you will) certainly should have a showing of support, the same as removal of the restrictions. This shift reflects the obvious bias of the parties providing the motivation for the AFN amendments - make it as tough as possible for the shareholders to lift the restriction, yet at the same time do everything possible to transfer the Corporations' assets to a tribal government.

Koniag also very strongly opposes the AFN proposal which eliminates the protection afforded by pre-filing the petition and setting out the standard that it can't include false or misleading information. The petition is part and parcel of a campaign for the shareholders' votes and thus could include statements designed to influence rather than inform them. If the Corporations were under the 1934 Securities Act, a stricter standard would apply. Simply because the shareholders are Natives does not mean they are any less entitled to true and factual information from those soliciting their support than the shareholders of "non-Native" Corporations.

Voting

Koniag believes that the voting requirement for the removal of the restrictions, the issuance of new stock and the transfer of assets should all be the same - 50% plus one share of the total outstanding voting shares. These are all major actions and should not be taken unless a majority of all shares support them.

Section 4 of S. 2065 appears to be ambiguous on the voting requirements. Its amendment to ANCSA (new section 7(h)(6)(A)(ii)) provides that such proposal would have to receive an affirmative vote of at least 50% of the outstanding shares or an affirmative vote greater than 50% of the shares voted or both. We suggest that this provision be clarified simply to provide for an affirmative vote of at least 50% of the outstanding shares. The provision for an affirmative vote of 50% of the shares voted seems to imply a lesser percentage which, with the 50% quorum requirement, could allow 25% of the outstanding shares to control the future of the Corporation on these important issues.

Koniag strongly disagrees with the AFN proposal which would require 50% of the outstanding shares to remove the restrictions but reduces to a simple majority the vote required to transfer the assets without consideration. It seems greatly inequitable to provide that 25% of the shares can give away property belonging to the other 75% of the shareholders. The vote requirement must be the same. This shifting of the vote requirement is further evidence of the desire of the proponents to force the outcome they wish by structuring the rules to insure that their goals will most likely be achieved.

Transfer of Assets

Koniag has no objection to the provisions of Section 5 of S. 2065 which allows a Village to transfer its assets to a qualified transferee entity. This provides another option which the shareholders of the Villages should have to protect their subsistence lands. Koniag does have a serious concern regarding the AFN proposed amendments which would allow the assets to be transferred to an IRA or traditional council if the shareholders are afforded membership in those organizations.

Historically, these councils have limited their membership to residents of the community in which they exist. In order to insure that the term "membership" in the proposed amendment to ANCSA Section 7a(a)(2)(B) means voting membership, that provision of Section 5 of S. 2065 should be amended to insert the term "full voting membership" in place of "membership." The goal of this Section is that an asset transfer can occur only if the Native shareholder's rights are protected by their being afforded the right to participate in the new owner of the assets. This can occur only if they have not membership but full voting membership. It is unfortunate but many of these councils might attempt to limit the participation rights of the Natives residing outside the Village unless this change is made.

Unless it is clarified that membership means that the shareholders would have full voting rights, Koniag must strongly oppose this Section as being susceptible to a meaning which would result in the disenfranchisement of the non-resident Village shareholders in the decisions affecting their assets.

Section 9

Koniag supports its earlier testimony on this subject, a copy of which is attached hereto.

Koniag would support as an alternative to the existing provisions of Section 9, which alternative would grant to the Village Corporations title to the sand and gravel on their lands. At present, sand and gravel has been interpreted to be part of the subsurface estate and thus belonging to the Regional Corporation and subject to the revenue sharing provisions of Section 7(i). As the Committee may be aware, the ownership of sand and gravel has created on-going difficulties for Village and Region alike. This transfer would resolve these problems and give the Village Corporation direct control over the development of that part of the subsurface which most frequently occurs.

Protection for Undeveloped Lands

Koniag strongly supports Section 10 of S. 2065 which basically automatically extends and clarifies the land bank provisions of ANILCA to all undeveloped and unencumbered Native Corporation lands. This provision is very much needed. During the almost six years since the passage of ANILCA, only one land bank agreement has been executed. This was the result of dogged determination of the Native Corporation involved which started trying to get the agreement almost three years earlier. Many Corporations don't have this degree of determination. This extension is needed to protect the traditional land use patterns of shareholders of Corporations which lack the sophistication to weave their way through the maze of federal agencies and their rules.

Sovereignty

It is unfortunate that the one issue which has generated the most adverse reaction to this much needed legislation has absolutely nothing to do with the problems sought to be addressed by it. Section 7 of S. 2065 has become the focal point of such hostility that it may result in the defeat of the legislation.

While Koniag takes no position on the so-called sovereignty issues, it does strongly oppose the including of Section 7 in the legislation, both in its present form and in the form of the proposed AFN amendments. Koniag opposes it because as written, it simply is not relevant to the issues sought to be addressed and which very much need the resolution afforded by the legislation.

As presently worded, the effect of Section 7 relates back to ANCSA. Section 7 should be limited in its scope to the present legislation. If the proponents and opponents of Native sovereignty wish to have Congress determine the issue then there should be separate legislation addressing the issue which can be debated and decided upon based upon its own merits. By including it in the proposed legislation, Koniag is afraid that it is severely jeopardizing the passage of otherwise beneficial legislation.

Perhaps we are too pragmatic but the ANCSA Corporations have immediate problems for which they and their shareholders are seeking solutions. S. 2065 affords some solutions. It was not meant to define the relationship of the United States, the State of Alaska and the Native peoples of Alaska. If ANCSA did effect sovereignty, then it is a question for the courts to decide or if Congress wishes, then for Congress. But if a legislative definition is chosen then we would hope it would be done in a manner that does not hold as hostage the ability of the ANCSA Corporations to effect a solution to their immediate problems.

SEC Exemption

Koniag also supports the extension of the exemption from certain securities legislation as provided in Section 12 of S. 2065. So long as the stock is subject to the restrictions and is not traded, to require the Corporations to go to the expense of full compliance with the securities legislation is an unnecessary burden. The existing provisions which would be extended provide ample protection to the shareholders of the Corporations.

On behalf of Koniag, Inc., I appreciate the opportunity to comment on S. 2065. While we recognize that any legislation is by its nature a process of compromise, it is our hope that the Committee will take the necessary action to insure that S. 2065 protects the rights of the shareholders, affords them options for the solution to the problems which have developed by providing them with the means to fulfill the promise of the Settlement Act - that the Settlement would be accomplished "with the maximum participation by Natives in decisions affecting their rights and property."

Sincerely,

KONIAG, INC.

Frank Pagano
Frank Pagano
President

Enclosure

cc: Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
All Regional Corporations
All Koniag Village Corporations
Committee on Interior and Insular Affairs
All U.S. Senators

SIERRA CLUB
330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB
FOR THE HEARING RECORD ON
S. 2065, ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS OF 1986
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
WASHINGTON, D.C.
AUGUST 4, 1986

S. 2065 has as its fundamental purpose the preservation of the Alaska Native Claims Settlement Act (ANCSA) land base, now estimated at between 47 and 48 million acres (Department of the Interior, 1984). The bill seeks to accomplish this objective by allowing restrictions on common stock alienation by Native shareholders after 1991 and through tax and other immunities afforded Native lands. By insuring continued Native control of their corporations, the bill would thereby guarantee that any diminution of the Native land base would be the result of decisions to sell by the Natives themselves, not by outside interests that have managed to buy controlling interests in the corporations.

The Sierra Club fully supports the basic purpose of the bill. However, this bill goes beyond continued restrictions on stock ownership and immunities to jeopardize the Alaska Land Bank, a key provision of the the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). The bill also raises the highly controversial, complex, and extraneous issue of native sovereignty.

Alaska Land Bank

At the request of the Alaska Native community, Congress established the Alaska Land Bank in ANILCA to facilitate retention of the undeveloped Native lands in Native ownership, and to promote compatible management of Native lands with adjacent state and federal lands. As most of the Native lands are undeveloped, the Bank is thus a mechanism for protecting the bulk of the ANCSA land grant.

Once undeveloped Native land is deposited in the Bank, the land recieves immunity from real property taxation, adverse possession, or loss to creditors. A depositor also can receive, depending upon the specific land bank agreement, assistance from the state or federal agency on land use planning, fire and trespass control, and related programs.

Undeveloped land deposited in the Bank is managed in a manner compatible with the management of adjoining federal or state land. Thus a significant public benefit is acquired in return for the public's agreement to waive property taxes and provide other advantages.

Because of the large amount of Native-owned land inside and adjacent to the ANILCA conservation system units, as well as similar state units, the Alaska Land Bank presents a major opportunity to accomplish two of Congress's primary goals for the ANCSA and ANILCA lands: preserving the Native subsistence economy that is based on the maintenance of undeveloped fish and wildllife habitat; and protecting the conservation system units from incompatible development of private inholdings.

S. 2065's Formula for Native Land Retention

In addition to the restrictions on stock alienation, the bill would confer on Native lands five immunites, three of which are already available through the Land Bank: immunity from adverse possession, from real property taxes, and from takeovers by creditors. The two new immunities are from loss of lands due to bankruptcy proceedings or other insolvency or moratorium laws, and loss due to "involuntary distribution or conveyance [of lands] related to the involuntary dissolution of the Native corporation."

Another key provision in the bill is the authority given for "any Native corporation or the stockholders of a Native corportion which has been dissolved involuntarily under applicable law to convey any or all of its assets, including the title to the surface or subsurface of land, to a qualified transferee entity..." As defined in the bill, a transferee entity would probably be the village councils.

Thus by the automatic grant of the immunities, and the option for non-corporate organizations, the bill seeks to protect the Native land base against shrinkage by strengthening the Native corporations and allowing other non-corporate entities if so desired by the shareholders.

Effect of S. 2065 on the Alaska Land Bank

S. 2065 would severely reduce the existing incentive for Native corporations and other private landowners to utilize the Alaska Land Bank. The bill does this by the grant of the five immunities, without the requirement for deposit in the Land Bank as a condition for receiving them.

For public policy purposes, the essential difference between the grant of immunities via Land Bank agreements and the bill's proposed automatic grant is the greater public benefit to be realized under the Land Bank formula. Once in the Bank, undeveloped Native lands are managed compatibly and cooperatively with the adjacent federal or state lands for 10 years (with withdrawal possible after 5 years, renewal after 10). As noted above, coordinated management is especially valuable for the public in the case of Native inholdings inside the ANILCA and state conservation system units.

Under the proposed bill, undeveloped Native lands could be developed at any time, and there is no requirement that their interim management be in any way coordinated with the adjoining state or federal lands. Developments associated with traditional and customary uses would be allowed on the undeveloped lands without disqualifiying the land for the immunities. Presumably these would be developments connected with traditional subsistence activities, e.g., a trapping cabin or fish camp structure, although the bill does not specify what kinds of development are consistent with such traditional use.

"Exploration" is also permitted on undeveloped Native land by the bill. Alaska Native corporations have entered into joint ventures with the mining and oil industries for exploration of Native selections. Under the bill, if economically recoverable deposits of hydrocarbons or other minerals were discovered on undeveloped Native land, the Native corporations could hold development of the deposits in abeyance pending favorable market conditions and thereby avoid taxes in the interim on what could be extemely valuable land.

Considerable development can occur in the course of this exploration. Exploratory oil and gas wells, for example, usually involve gravel airstrips thousands of feet long that can handle Hercules cargo planes and other aircraft. Roads, camps, helicopter pads, and other facilities requiring gravel pads are also routinely associated with such exploration. Large-scale exploration efforts for hard-rock minerals can also entail similar developments.

We urge the Committee to closely examine the tax shelter implications for both Native and non-Native corporations of the "exploration" clause in the undeveloped lands definition in S. 2065.

Alaska Federation of Natives' Objections to the Alaska Land Bank

Leaders of the Alaska Federation of Natives (AFN) assert that the automatic application of the five immunities is necessary because the Bank has not worked. The Interior Department has been slow in utilizing land bank agreements, these leaders say, and where the Department has entered into discussions they have drawn the Native corporations into lengthy negotiations. AFN further argues that the 175 or so village corporations do not have the legal or administrative capability to undertake complicated negotiations leading to land bank agreements.

We find the AFN's case against the Land Bank unpersuasive. Granted

Interior's slow response to the Land Bank opportunity, another reason why only one land bank agreement has been signed to date is the lack of interest of most Native corporations. This is because the threat of taxation of Native lands is not imminent. Under ANCSA, all Native lands, whether developed or not, are immune from taxation for twenty years from the date of conveyance, not from 12/18/71, the date of ANCSA's enactment. Because most conveyances to date have been made since the late 1970's, with about 25 percent of the total grant still to be conveyed, most Native corporations have a comfortable cushion of years before they have to worry about taxation, and hence the possible loss of their lands due to inability to pay those taxes.

According to the AFN, the major Native worry now is loss of land through involuntary dissolution of the Native corporations. Currently, the Land Bank does not offer immunity from loss of land due to involuntary dissolution.

Meanwhile, this past spring the first land bank agreement was reached between the four-village Gana-A-Yoo corporation and the U.S. Fish and Wildlife Service. The Service has also been talking to several other Native corporations with holdings within or adjacent to the national wildlife refuges in the Bristol Bay area, on the Alaska Peninsula, and at Cape Hope. With the signing of the first agreement, the Service expects others to follow.

Most significantly, the Service has drafted a model land bank agreement that greatly simplifies the task of a Native corporation desiring to deposit lands in the Alaska Land Bank. By agreeing to the stipulations outlined in Sec. 907 of ANILCA, a corporation can deposit any or all of its undeveloped lands without the need for protracted negotiations or expensive legal fees. Furthermore, Sec. 907 allows the Native corporations to deposit their lands without the consent of the Secretary, provided the minimum stipulations are agreed to by the corporations.

The Service's model agreement concept could be readily adopted by the Bureau of Land Management, the National Park Service, and the U.S.

Forest Service.

Native Sovereignty Implications

Taken in conjunction with the five immunities granted by the bill, the qualified transferee entity authority could set the stage for later legal assertions of sovereignty by transferee entities that may be established, despite the disclaimer in the bill and the intent of the bill's sponsors. If, as advocates of Native sovereignty suggest, the most likely transferee entities would be village councils, such councils could seek formal tribal status from the Secretary, organize under the Indian Reorganization Act, and exercise sovereign power over (ANCSA) lands transferred to them under the bill, all without affecting the scope of Native governmental powers mentioned in the bill's disclaimer.

Before Congress adopts provisions that could lead to the exercise of such sovereign power over ANCSA lands, it should carefully study the likely consequences of such an action. For example, Native sovereignty would mean that state environmental, civil, and other laws would no longer apply. State hunting and fishing regulations would be supplanted by those promulgated by the sovereign entity, thus in effect transferring exclusive control over fish and wildlife on Native lands to private interests, despite the fact that fish and wildlife populations do not reside solely on Native lands, but move freely across Native, state, and federal boundaries.

Under existing law, fish and wildlife are owned in common by the people of Alaska. Exclusive control by sovereign entities could enormously complicate the already difficult task of coherent, coordinated wildlife management in Alaska.

Recommendations

In an effort to further the original intent of the bill, we recommend that the Committee preserve and strenthen the Alaska Land Bank by shifting the five immunities of S. 2065 to the Land Bank section (907) of ANILCA. This amounts to adding two new immunities to the Land Bank, because three of S. 2065's five immunities are already available to Bank depositors.

We also urge the Committee to guard against unintended promotion of the Native sovereignty cause in this bill by providing that the new transferee entities may not be used as grounds for asserting sovereign power over ANCSA lands.

A strengthened Alaska Land Bank can be the primary means of providing the security for the ANCSA lands desired by the Alaska Native community, whose idea the Bank was in the first place. We urge the Committee to give the Land Bank its continued support.

Thank you for the opportunity to present this statement.

TESTIMONY OF SENATOR BARRY GOLDWATER
BEFORE THE SENATE SUBCOMMITTEE
ON PUBLIC LANDS AND RESERVED WATER
AUGUST 4, 1986

Mr. Chairman, Thank you for the opportunity to present my views in support of S. 2370, a bill to allow the Francis Scott Key Park Foundation, Incorporated to erect a memorial in the District of Columbia.

The Francis Scott Key Foundation, in concert with the Secretary of the Interior, the Mayor of the District of Columbia, the National Commission of Fine Arts, and the National Capital Planning Commission, would develop a memorial park in honor of the author of our National Anthem, "The Star Spangled Banner." The proposed site is located next to Key Bridge, in Georgetown, and is near Francis Scott Key's former home, where he lived at the time he wrote our Anthem. No government funds will be used to develop the park, which will be turned over to the National Park Service.

The Foundation, established in 1983, has succeeded in securing funds to launch a nationwide campaign and more than $180,000 has been raised or pledged in private contributions. The organization has been working with the Federal and District of Columbia Governments, local planning commissions, and has received supporting statements from the local Neighborhood Advisory Commission, the Citizens Association of Georgetown, and the Business and Professional Association of Georgetown. This is definitely an excellent example of private sector initiative; and, I am pleased to be a member of the Foundation's Advisory Council.

This endeavor is very worthwhile and I am proud to be a cosponsor of this legislation. So much of our thinking is taken up by daily occurrences that we don't take the time to reflect back on what has made our country the great nation it is today. Our National Anthem embodies the spirit upon which America was founded and by which she has endured. Let us salute the individual who in the rage of battle authored words that have become the watchword of our nation.

It is only right and proper that we Americans have a fitting memorial to Francis Scott Key. I hope the Committee will be able to act on this legislation in a timely manner.

Walter E. Fauntroy

UNITED STATES SENATE

Statement of

HONORABLE WALTER E. FAUNTROY
(D.,D.C.)

Before the

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER
AND RESOURCE CONSERVATION

of the

COMMITTEE ON ENERGY AND NATURAL RESOURCES

on

S. 2370: To Allow the Francis Scott Key Park
Foundation, Inc. to erect a Memorial
in the District of Columbia

August 4, 1986 Dirksen 366

CHAIRMAN WALLOP. IT IS A PLEASURE TO SPEAK ON BEHALF OF S. 2370--A BILL AUTHORIZING ESTABLISHMENT OF A MEMORIAL TO HONOR FRANCIS SCOTT KEY. A REVIEW OF THE PROPOSED PLANS FOR THE MEMORIAL WOULD PLACE IT ON A SITE IN GEORGETOWN NEAR HIS FORMER HOME AND, USING THIS SITE, WOULD BRING BEAUTY TO A PRESENTLY UNDER-UTILIZED LOCATION WHICH HAS HAD A VERY LIMITED POTENTIAL FOR ANY PLANS OF BEAUTIFICATION. IT IS A VERY COMMENDABLE PLAN.

AS THE CONGRESSMAN FROM THE CITY OF WASHINGTON, D.C., THE PRESERVATION OF OUR NATIONAL HERITAGE IN THIS, THE CAPITAL CITY OF THE UNITED STATES, IS ALWAYS OF PRIME INTEREST TO ME. BUG RARELY HAVE I SPOKEN TO AN ISSUE OF HISTORIC SYMBOLISM THAT IS AS MOVING AND INSPIRING AS THE SIMPLE BUT REMARKABLE STORY OF FRANCIS SCOTT KEY--A LOYAL AMERICAN, AND, QUITE APPROPRIATELY, A CITIZEN OF WASHINGTON, D.C.

THE YEARS OF 1812 THROUGH 1814 WERE TROUBLED YEARS FOR THE AMERICAN NATION. OUR HARD-WON VICTORIES OVER THE BRITISH HAD UNIFIED THE STRUGGLING COLONIES. THE AMERICAN CONSTITUTION HAD BEEN WRITTEN. THE CONGRESS OF THE UNITED STATES HAD BEEN ESTABLISHED AND WAS OPERATING, AND THE CITY THAT WAS TO SYMBOLIZE SO MUCH TO THE WORLD IN FREEDOM, DEMOCRACY, OPPORTUNITY, AND HUMAN RIGHTS--THE BEAUTIFUL CITY OF WASHINGTON ON THE BANKS OF THE "POTOWMACK RIVER"--WAS SLOWLY BEING BUILT.

FOR JUST A MOMENT, TRANSPORT YOURSELVES BACK TO THE DANGEROUR AND TRYING TIMES WHICH GAVE BIRTH TO THE LASTING CONTRIBUTION OF FRANCIS SCOTT KEY. CERTAIN THIS TIME THAT WE WERE GOING TO BE RETURNED TO THE STATUS OF "COLONY OF THE BRITISH EMPIRE", AND THAT THESE FOOLISH AND AUDACIOUS AMERICANS SHOULD AND WOULD BE TAUGHT THEIR LESSON IN "REVOLTING" AGAINST THE MIGHTY BRITISH CROWN, THE BRITISH WERE PRESSING THEIR ATTACKS UPON THE YOUNG, VULNERABLE AMERICAN NATION, IN VIOLATION OF TREATIES MADE.

IN THIS ATMOSPHERE OF SIEGE AND CONTINUED DANGER FOR ALL THE CITIZENS OF THE CITY OF WASHINGTON AND THE WHOLE UNITED STATES, A YOUNG LAWYER NEGOTIATED WITH THE BRITISH TO FREE AN AGING AMERICAN PHYSICIAN CAPTURED BY THE BRITISH. THE "MISSION OF MERCY" BY YOUNG FRANCIS SCOTT KEY SUCCEEDS-- BUT HE WAS ARRESTED AND DETAINED BY THE BRITISH BECAUSE HE KNEW ABOUT THE BRITISH PLANS TO ATTACK BALTIMORE!

PUT YOURSELF IN HIS PLACE. THROUGH THE LONG, CRUEL night (AS OUR SCHOOL BOOKS REPORTED IT) YOUNG FRANCIS SCOTT KEY DESPAIRED FOR THE FATE OF FORT MCHENRY. AND THEN CAME THE DAWN AND TO HIS GRATEFUL EYES APPEARED THAT WONDERFUL SIGHT--THE "STARS AND STRIPES" AND IN THE WORDS OF HIS SONG (HOWEVER HARD IT IS TO SING) "THAT OUR FLAG WAS STILL THERE"!

OUR AMERICAN DEMOCRACY IS A SPLENDID "ACCIDENT OF HISTORY" SIRED BY THE PHILOSOPHES OF THE ENLIGHTENMENT, BORN OF THE AGE OF REASON, AND NURTURED BY THAT REMARKABLE COMBINATION OF DREAMS, SPIRIT, AND RESOLVE THAT HAS MADE AMERICANS UNIQUE AMONG NATIONS.

BECAUSE OF OUR FREEDOMS, OUR SPIRIT OF ENDEAVOR, OUR BOUNDLESS FAITH IN THE FUTURE, WE HAVE A LEGACY TO PROTECT AND TRANSMIT TO OUR CHILDREN--AND TO THE REST OF THE OFTEN WEARY WORLD. WE CAN AND MUST "KEEP THE FAITH" WITH THAT SPLENDID HERITAGE.

FOR THAT REASON, AND TO HONOR THIS YOUNG MAN WHOSE NIGHT OF AGONY WE SHARED THROUGH HISTORY AND WHOSE JOY IN THE MORNING WE CELEBRATE, A MEMORIAL HONORING HIS EXPERIENCE IS MOST FITTING.

WE WANT TO BE REMINDED OF HIS JOY AND THROUGH IT, OUR UNIQUE NATIONAL HERITAGE OF FREEDOM, HUMAN RIGHTS, AND A GOVERNMENT THAT WE HOPE WILL ALWAYS REMAIN OF THE PEOPLE, BY THE PEOPLE, AND FOR THE PEOPLE.

THIS SIMPLE STORY, ILLUMINATED THROUGH A MEMORIAL, WILL GIVE A RENEWAL OF JOY, HOPE AND PRIDE TO THOSE WHO SEE IT, WHETHER THEY BE OUR OWN AMERICANS, OR VISITORS FROM THE REST OF THE WORLD.

I URGE THE SENATE TO ACT FAVORABLY UPON THIS RESOLUTION. THANK YOU FOR GIVING ME THIS OPPORTUNITY TO SPEAK TO YOU.

# # # # #

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Advisory Neighborhood Commission 2E
Georgetown
1041 Wisconsin Ave., N.W., Washington, D.C. 20007 (202) 337-4753

ANC 2E

August 1, 1986

The Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands, Reserved Water and Resource
Conservation
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20510

Dear Senator Wallop:

Advisory Neighborhood Commission 2E is the representative body created by the Home Rule legislation of a decade ago for the Georgetown area of Washington, D.C. As such, ANC 2E represents the residents and businessmen of Georgetown and covers the area where the proposed Francis Scott Key Memorial Park may be located.

The Commission has unanimously endorsed the creation of the Francis Scott Key Park and specifically endorses the language contained in S. 2370 as well as the location at Key Bridge and M Street, N.W.

Sincerely,

William A. Cochran
Chairman

cc Paul Imse, Jr.
Manus Fish
Honorable John Wilson
Business and Professional Association of Georgetown
Citizens Association of Georgetown
Honorable Marion Barry

The Citizens Association of Georgetown

1656 33rd Street, N.W. Washington, D. C. 20007
(202) 337-7313

August 1, 1986

The Honorable Malcolm Wallop
Chairman
Subcommittee on Public Lands, Reserved
Water and Resource Conservation
Committee on Energy and Natural Resources
308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wallop:

The Citizens Association of Georgetown ("CAG") had occasion earlier this year to endorse enthusiastically H.J.Res. 435 which would enable the creation of a Francis Scott Key memorial park in the District of Columbia. A copy of that letter of endorsement is enclosed herewith.

It has been brought to CAG's attention that a parallel legislative action by the Senate, S.2370, is now under consideration.

In that connection, I am pleased to advise you that CAG remains an enthusiastic supporter of the principle of the creation of a suitable memorial park to honor Francis Scott Key. We note that there are differences between the bill now before your committee and H.J.Res. 435, and this expression of support is not intended to indicate a preference between the two, since these differences have not been considered in depth by CAG. However, to the extent that both proposals seek the same ultimate goal of the establishment of this park, they both have CAG's support.

Sincerely yours,

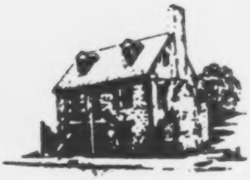
Jerome S. Wagshal

Jerome S. Wagshal
First Vice President

JSW:m
enc.

The Citizens Association of Georgetown

1656 33rd Street, N.W. *Washington, D. C. 20007*
(202) 337-7313



10 March 1986

Dear Congresswoman Oakar:

Re: Francis Scott Key Memorial Park

Our association, which represents 1200 Georgetown residents, wishes to endorse enthusiastically the proposed resolution that would enable the Francis Scott Key memorial park to be created in the District of Columbia.

We have followed the development of this proposed park since its inception with the hope that it would be located at the western end of Georgetown and come under the care and supervision of the National Park Service's Georgetown waterfront park now being planned.

At our Association's February membership meeting, a resolution passed unanimously in support of House Joint Resolution 435, when it comes before the Task Force on Libraries and Memorials.

Sincerely,

Juan Cameron
President

Representative Mary Oakar
Chairman
Task Force on Libraries and Memorials
House Committee on Administration
Room 103
House Annex 1
Washington,D.C. 20515

Date: August 4, 1986

The Honorable Malcolm Wallop
Chairman
Subcommittee on Public Lands, Reserved Water and Resource Conservation
Committee on Energy and Natural Resources
308 Dirksen Senate Office Building
Washington, D.C. 20510

Mr. Chairman:

I am grateful to this committee for the opportunity to write in support of S. 2370.

At the recent celebration of the Fourth of July and the Centenial of the Statue of Liberty, our country had an opportunity to joyously recognize the unfolding dream of our forefathers and the millions who have come to dedicate themselves to their glorious vision. Whether at backyard barbecues, the Boston Pop concert, the Washington Monument, or a star lit knoll by a sheepherder's home,"the Star Spangled Banner" brought us to our feet to sing our stirring Anthem.

I stood on the deck of a ship in New York Harbour, the sky alight with "bombs bursting in air," and reflected on glistening faces where tears of joy came unbidden to many.

We have come in this moment of our history to two celebrations— the Centenial of the Statue of Liberty and the Bicentenial of our Constitution. In the recent past it was the Bicentennial of the Founding of our Country. Since 1976, we have seen a rekindling and a rededication to our revolutionary experiment in republican democracy and personal liberty. The singing of our National Anthem stirs our souls as we celebrate these landmarks in our history.

How appropriate it would now be to have a memorial to publicly honour and recognize the contribution made by Francis Scott Key to our national heritage. As the Francis Scott Key Park Foundation has stated: "Key's deeds and words symbolize the potential that is in all Americans to make extraordinary voluntary contributions to our country". What a perfect time to dramatically applaud this spirit!

What a perfect place to locate the memorial! It is an open area only a few feet from the spot where Francis Scott Key lived in the "Court" end of Georgetown. It would become the beautiful western gateway to our nation's capital. Other historic places are nearby: the C and O Canal and the Forrest-Marbury House (a Category I Landmark in which George Washington made the final arrangements for the establishment of our nation's capital).

The Foundation which has worked diligently to establish the Francis Scott Key Memorial deserves our wholehearted support. Their work has been selfless and voluntary. It has reflected the best of American spirit and energy. Their plans have been thoughtful and thorough.

Senator Frank Murkowski (R. - Alaska) has sponsored a bill of national importance. It will not only focus our tribute to Francis Scott Key who captured our country spirit in the words of our National Anthem. It will also send a signal across our land that patriotism and pride of country give power to the beacons leading to this "land of free and home of the brave".

Thank you,

Betty Jane Johnson Gerber

Betty Jane Washington Thornton Johnson Gerber

Business and Professional
Association of Georgetown

1212 Wisconsin Avenue • Washington, D.C. 20007
202/333-3577

July 30, 1986

The Honorable Malcolm Wallop
Chairman
Sub-Committee on Public Lands,
Reserved Water and Resource
Conservation
Committee on Energy and
Natural Resources
U.S. Senate
Washington, DC 20510

Dear Senator Wallop:

As Vice-President of the Business and Professional Association of Georgetown, I am pleased to inform you that this Association is in complete and wholehearted support of Bill S. 2370 to authorize the establishment of a memorial to Francis Scott Key in the District of Columbia.

The Business and Professional Association of Georgetown has enthusiastically supported the efforts of the Francis Scott Key Park Foundation since its founding in 1983, and has encouraged the support of the community for this effort as well. We believe that the Foundation is an excellent and very responsible volunteer organization which has the ability to make the Francis Scott Key Memorial program a reality.

The Business and Professional Association of Georgetown strongly urges that the task force act favorably on Bill S. 2370 and we look forward to the day it is enacted into law.

For your information, I am also attaching a copy of a Resolution in support of the Foundation and Memorial which was adopted by our Board of Directors last year.

Sincerely,

John Laytham
Vice-President

/ki

Attachment

BUSINESS & PROFESSIONAL ASSOCIATION RESOLUTION OF SUPPORT FOR THE FRANCIS SCOTT KEY PARK FOUNDATION

WHEREAS, Francis Scott Key's home and law office were located in Washington, DC at the time he embarked upon his fateful mission of mercy to Baltimore which resulted in the inspiration of the imortal words of The Star Spangled Banner on September 14, 1814: and

WHEREAS, Francis Scott Key served as United States Attorney for the District of Columbia and was prominent in the early development of our Nation's Capital; and

WHEREAS, the site of Francis Scott Key's home and law office was lost to ramps from the Whitehurst Freeway to Key Bridge and M Street; and

WHEREAS, there is no memorial to Francis Scott Key and his contributions to our Nation's heritage and our Nation's Capital; and

WHEREAS, the Francis Scott Key Foundation, Inc. is trying to raise funds to build a public park in honor of Francis Scott Key on the now vacant land bounded by Key Bridge, M Street, 34th Street and the C&O Canal; and

WHEREAS, the Francis Scott Key Park Foundation Inc., intends that the proposed Park, in addition to honoring Key, will provide a dramatic gateway into our Nation's Capital at Key Bridge and will provide an attractive gateway into the C&O Canal National Historical Park form western Georgetown by way of the Mule Bridge; and

WHEREAS, the Francis Scott Key Foundation Inc., intends to donate the completed Francis Scott Key Park to the National Park Service as a gift to the American people;

NOW, THEREFORE, it is hereby

RESOLVED, that the Business and Professional Association of Georgetown hereby endorses and supports the efforts of the Francis Scott Key Park Foundation, Inc. to build the Francis Scott Key Park on the site bounded by Key Bridge, M Street, 34th Street and the C&O Canal; and it is

FURTHER RESOLVED, that the Business and Professional Association of Georgetown hereby encourages it's Members and the general public to support the Francis Scott Key Park Foundation, Inc. with financial contributions and with the donation of their time and skills which may help the Foundation reach its goal.

FRANCIS SCOTT KEY PARK FOUNDATION, INC.

August 15, 1986

The Honorable Malcolm Wallop
Chairman
Subcommittee on Public Lands,
Reserved Water and Resource Conservation
Committee on Energy and Natural Resources
308 Dirksen Senate Office Building
Washington, DC 20510

Re: S. 2370, to allow the Francis Scott Key Park Foundation to build a memorial in the District of Columbia

Dear Senator Wallop:

During the course of the August 4, 1986 hearing on S. 2370, authorizing the establishment of a memorial to Francis Scott Key, Senator Murkowski raised a question as to what would happen if the District of Columbia government does not transfer jurisdiction and control over the proposed site for the Francis Scott Key Memorial to the National Park Service or if the District of Columbia demands compensation for the property which the National Park Service is unable to provide. The Foundation does not believe that the questions raised during the course of the colloquy were adequately answered, and this supplemental statement is provided in clarification of the answers to those questions.

At the outset, it should be pointed out that, whether or not the proposed site for the Francis Scott Key Memorial is ultimately transferred to the National Park Service by the District of Columbia, the legislation before the Subcommittee must be enacted to authorize the Memorial's construction. Chap. 355, §1, 37 Stat. 417 at 444 (August 24, 1912), 40 U.S.C.A. §68; D.C.Code §8-128 (1981 ed.).

Clearly, Senator Murkowski's questions were raising a concern about the maintainance of the Francis Scott Key Memorial after it is completed. In the event that the suggested amendment to the bill contained in my prepared statement to the Subcommittee relating to maintainance is adopted (a new Section 4 for the bill), the responsibility for the maintainance and care of the Memorial would rest with the District of Columbia should the land not be transferred to the Park Service.

1530 WISCONSIN AVENUE, N.W.•WASHINGTON, D.C. 20007•(202) 333-8194
A NON-PROFIT, TAX EXEMPT ORGANIZATION

The Foundation would underscore at this point that it intends to raise an endowment sufficient to fully fund the care and maintainance of the Memorial -- no matter who has the responsibility for its maintainance and care. This is true even if the responsibility for that maintainance and care remains with the Foundation for whatever reason.

On the question of the prospects for the transfer of the land from the District of Columbia to the National Park Service, I would like to correct one misstatement of fact I made during the course of the hearing and to provide information which indicates the positive prospects for such a transfer taking place. During my testimony, I referred to a land swap between the Park Service and the District of Columbia being involved in the Park Service's acquisition of the land for the Georgetown Waterfront Park. There was and is not such a land swap involved in the Park Service's acquisition of that land, and my testimony on that matter was incorrect.

Recently, the plan for the Georgetown Waterfront Park and improvements to the Georgetown section of the C&O Canal National Historical Park were approved, and the District of Columbia participated in the review and approval process for this plan. This approved plan includes a provision for the transfer of the proposed site for the Francis Scott Key Memorial from the District of Columbia to the National Park Service.*/ In addition, the proposed site for the Memorial is now included within the boundaries of Pallisades Park, even though it has not yet been acquired by the Park Service.

Further, formal expressions of support for the Francis Scott Key Memorial from the District of Columbia Government, and informal expressions of support for both the Memorial and the proposed site which the Foundation has received from the Mayor and other Distict of Columbia officials, make the Foundation confident that the transfer of this land from the District of Columbia to the Park Service will in fact take place in due course.

---

*/ A copy of excerpts from the "Design Concept Plan for The Georgetown Waterfront Park and the C&O Canal NHP (Georgetown Sector)" prepared by the National Park Service relating to the approval process and the proposed site for the Francis Scott Key Memorial are attached and made a part hereof.

I hope this will adequately answer Senator Murkowski's questions and any others which the Subcommittee may have.

In the event that there are further questions or there is a need for further information, please call me at 379-7060.

Thank you.

Very truly yours,

T. Paul Imse, Jr.
Secretary & General Counsel

Attachment

cc: The Honorable Frank H. Murkowski, with Attachment

DESIGN CONCEPT
PLAN

FOR

THE GEORGETOWN WATERFRONT PARK
AND THE C & O CANAL NHP
(GEORGETOWN SECTOR)

PREPARED BY THE NATIONAL PARK SERVICE
NATIONAL CAPITAL REGION, WASHINGTON, D.C.

Planning Process to Date

The Georgetown Waterfront park boundary was formally established on August 2, 1984, by the National Capital Planning Commission. The National Park Service, in cooperation with the District of Columbia, entered into a public planning process to decide future uses and park-related development.

Because of the physical and historical relationship of the Georgetown section of the C&O Canal National Historical Park to the Georgetown Waterfront, the canal from Foundry Branch to Rock Creek was included in the planning process.

The draft plan was reviewed and supported by the following official agencies: the National Capital Planning Commission, the District of Columbia Office of Planning, the Commission of Fine Arts, the District of Columbia Historic Preservation Review Board, and the C&O Canal National Historic Advisory Commission. In addition, citizen involvement opportunities occurred when the draft plan was put before the Advisory Neighborhood Commission 2E, the Citizens' Association of Georgetown, and the Foggy Bottom Citizens' Association.

Park construction will depend on both private and public funds. Public funding will, of course, depend on Congressional appropriations. Full park development is expected to occur in phases extending over many years.

* * *

(23) TRANSFER NON-WATERFRONT DISTRICT OF COLUMBIA LANDS

In addition to the transfer of the 10-acre waterfront lands, further transfers of jurisdiction to the National Park Service are proposed. The largest of these would involve the tract bounded by 34th Street, the canal, Key Bridge and M Street. Because this important space offers remarkable views of the Potomac River, and contributes to a major gateway to the city, it must be appropriately landscaped so as to integrate the space into its surroundings and respect its historic setting. A memorial to Francis Scott Key is proposed for this site and is now awaiting Congressional authorization.

○